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Respondent.

Docket 74071 Document 2018-13803

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1 THE COURT: Okay.

2 MR. WESTBROOK: I objected to the flight instruction in its total. And
3 then after that objection was overruled and you indicated you were going to give
4 one, I then submitted an alternative. I just don't want it -- I want it to be clear that I
5 didn't want one at all.

6 THE COURT: Yes.

7 MR. WESTBROOK: The second one is I wanted to make -- and this is
8 not involving a jury instructions. I wanted the court to be aware that I filed three
9 offers of proof today. Not -- the first one is not really an offer of proof.

10 THE COURT: Offer of who?

11 MR. WESTBROOK: It's just that the appellate department suggested
12 that I should include the e-mails where we discussed settling jury instructions, since
13 that's out-of-court talking.

14 THE COURT: Oh, sure. Yeah.

15 MR. WESTBROOK: There's nothing I -- particularly relevant in them.

16 THE COURT: I have no problem with that.

17 MR. WESTBROOK: But I filed this as a court exhibit.

18 I also filed as a court exhibit the 51.385 memorandum that I had
19 sent to the court and the State way early on.

20 THE COURT: Oh, I assumed that's filed.

21 MR. WESTBROOK: I had forgotten to file that. So I just filed it to make
22 sure it was filed.

23 THE COURT: Perfect.

24 MR. WESTBROOK: And then the final thing is I submitted offers of
25 proof regarding Defendant's Motions to Dismiss for repeated and ongoing discovery

1 *Brady* violations. The offers of proof -- and I can just ask outright, I think that given
2 the three additional *Brady* discovery violations that have occurred during trial, that --
3 that dismissal is warranted, consistent with the law that I've already cited to the
4 court.

5 What I did in this offer of proof, just so we don't have to have a
6 long, long argument here, and it would be in writing --

7 THE COURT: Okay.

8 MR. WESTBROOK: -- is I detailed what they were.

9 THE COURT: And I think I told you to -- because we were wasting the
10 jurors' time, and I said, look, it's taking too long. Put it in writing.

11 MR. WESTBROOK: That's exactly what I did.

12 THE COURT: Perfect.

13 MR. WESTBROOK: I -- I --

14 THE COURT: And I'll read it.

15 MR. WESTBROOK: Yeah. And so I just wanted to let you know that it
16 was here, so -- so you could read it. And if you decide you want to dismiss the
17 case, that'll save us a big, long closing argument.

18 And that's it. Thank you, Your Honor.

19 THE COURT: Probably unlikely I would do that before we let the jury
20 finish their task.

21 MR. WESTBROOK: I understand, Your Honor.

22 THE COURT: Okay.

23 MR. HAMNER: Your Honor, I mean, I was just handed this this
24 morning. I would at least like to make a brief record. I'm not going to submit
25 anything in writing, because I think some of the things are mischaracterized

1 factually, and I would at least -- least like to bring it to the court's attention.

2 THE COURT: I'll let you make a record, too.

3 MR. HAMNER: Okay.

4 THE COURT: Do you want to do it orally or in writing?

5 MR. HAMNER: I can just -- if I could just do it orally right now,
6 Your Honor.

7 THE COURT: Okay.

8 MR. HAMNER: With respect to subsection 1, Detective Campbell's
9 computerized file notes, if you would turn to page 4 --

10 THE COURT: I don't have it yet. So -- so I've --

11 MR. HAMNER: I --

12 THE COURT: -- that's okay. I'll --

13 MR. WESTBROOK: May I approach, Your Honor? I have a courtesy
14 copy.

15 THE COURT: Thank you. I'm just -- I'm listening attentively. Thank
16 you.

17 MR. WESTBROOK: There it is.

18 THE COURT: Appreciate it.

19 MR. HAMNER: I'll try to be as brief as I can.

20 THE COURT: No, that's --

21 MR. HAMNER: Just with respect to this --

22 THE COURT: Hey, we -- we're waiting for the jury food to arrive. So
23 it's okay.

24 MR. HAMNER: Okay. It -- it states that the evidence of bad faith came
25 forth in an e-mail from Mr. Hamner to Detective Campbell revealing the identities of

1 the whereabouts of four potential witnesses.

2 I would note for the record that this discussion about the potential
3 location of these witnesses happened -- were -- this was made to the defense --
4 Ms. Kierny and I had spoke about it as early as kind of January, around this time,
5 about a week before February 1st, were indicated there could be potentially other
6 people. But at that time that this information was out there, I had never spoken with
7 any of these people. We didn't know what they had to say. And we were waiting
8 on a detective to set up an actual real forensic interview to determine the substance
9 and the merits of what they had to say.

10 So the idea that it was hidden at this point, I don't think is an
11 accurate statement.

12 Additional --

13 THE COURT: Well, you had put that on the record previously. I
14 remember you saying that at -- at one of our discovery hearings.

15 MR. HAMNER: Correct.

16 Additionally, the notes -- the detective handwritten notes that
17 were provided prior to start of trial also contained the addresses of these
18 individuals.

19 Additionally, I would note for the record, the defendant also knew
20 where these individuals lived. For example, Litzi even testified she lived right next
21 door to the defendant. So the defendant had knowledge of the names of these kids
22 and -- and who -- and where they lived, if they needed to provide it to his -- his
23 counsel.

24 THE COURT: They -- they didn't know what they were going to say.

25 MR. HAMNER: Right. That would be correct. But, presumably, if he's

1 looking -- the defendant knew where these kids were located if he wanted -- if for
2 his defense team to investigate it.

3 THE COURT: I understand.

4 MR. HAMNER: I want that for the record.

5 Additionally, the -- the statement about not having access to
6 computerized notes, his testimony about that, while the -- while there may be
7 someone in the DA's office who has access to I think it's called PremierOne -- what
8 we've determined and we've tried to make a record of this, is that, number one,
9 Ms. Kollins and I don't have access to PremierOne. We couldn't have access to it.

10 Additionally, my understanding is that the DA's office version of
11 PremierOne doesn't include all of their notes, anyway, so it would need to have
12 been turned over by the detective.

13 THE COURT: Well, the detective said at trial that you -- he confirmed --
14 although he misspoke, I think, initially he did confirm that you did not have access
15 to those records, although he would have turned them over, had you specifically
16 requested them.

17 MR. HAMNER: Correct. Additionally, the statement that these notes
18 contained exculpatory evidence, the defense fails to kind of specify what that is.
19 But I don't want to get into a whole argument.

20 THE COURT: Understood.

21 MR. HAMNER: But the State's position was, when we initially turned
22 these over, was that we went through, and it -- it memorialized all of the evidence
23 and the arrest reports, as well as voluntary statements.

24 And I made an offer to the court. I'd be willing to go page by
25 page, if need be.

1 With respect to Officer Narvaez's body camera recording.

2 THE COURT: Body camera.

3 MR. HAMNER: That is an inaccurate statement to refer to them as
4 body cameras. The -- the -- what the witness stated was it -- he said -- he didn't
5 say body camera. He corrected himself and said it was a dash camera. That
6 there's a camera on the vehicle and that there would be audio of the interactions,
7 because they were mic'd up. So to call them body cameras is completely incorrect.
8 There is no body camera for Henderson.

9 The dash camera was provided to the defense, along with the
10 corresponding audio, and it was provided and we had discussed this back at the
11 beginning of the trial when they were claiming we withheld information.

12 And I said, Look, we went out on an abundance of caution and
13 got you the dash cam, as well as the Mike mic. So I wanted -- the characterization
14 that it's a body cam is completely incorrect.

15 I'd also note they had failed the second prong of *Brady* with
16 respect to that, because that is information they could require through their own
17 reasonable due diligence if they wanted to get it, since the original arrest report
18 noted he was arrested in Henderson.

19 With respect to Dr. Pacult's notes, there was --

20 THE COURT: And this is a new issue I hadn't seen before.

21 MR. HAMNER: Right.

22 THE COURT: So let's -- what's your position on that?

23 MR. HAMNER: There was never any reports prepared. I don't know if
24 there was a ruling about -- and I'll confer with Ms. Kollins about providing any notes.

25 [Pause in proceedings.]

1 MR. HAMNER: And -- and we put on the record what we provided him,
2 and that was the grand jury testimony from this case, as well as the two arrest
3 reports with respect to Scarlett Rangel and then the Moreno girls and Yezline.

4 THE COURT: I guess he had some notes he prepared on his own. So
5 not the stuff you gave him, but stuff he prepared --

6 MR. HAMNER: Right.

7 THE COURT: -- that you apparently didn't know of that he mentioned
8 on his --

9 MR. HAMNER: He never provided it to us.

10 THE COURT: -- direct examination.

11 MR. HAMNER: Yeah.

12 And then with respect to kind of the tablet, I'm not necessarily
13 going to go through every one of these items. I would note every one of these
14 things were provided. We've talked about the -- the timing of this and the reasons
15 why it was already kind of provided at different times.

16 I would also go off -- go forward and say a number of these items
17 are not exculpatory in nature --

18 THE COURT: Well, and --

19 MR. HAMNER: -- despite the blanket claim that they are. But I'm not
20 going to do that right now.

21 THE COURT: You -- you made your record. And I -- I think the burden
22 still lies with the defense to do it in a timely manner, after the conclusion of trial, if
23 he -- if he believes it's appropriate, is to still point out to the court if there was
24 exculpatory material --

25 MR. HAMNER: Sure.

1 THE COURT: -- turn it in any of, like, say, Detective Campbell's
2 records that were not produced and explain to the court why it was exculpatory in
3 light of how the trial went.

4 I still haven't seen that. But I think it wouldn't be untimely for you
5 to do that.

6 MR. WESTBROOK: Okay.

7 THE COURT: All right.

8 MR. HAMNER: Thank you, Your Honor.

9 MR. WESTBROOK: Your Honor, can I just respond to one thing.

10 THE COURT: Yes.

11 MR. WESTBROOK: I asked Officer Narvaez if he had a body camera,
12 and he said yes. I mean --

13 MR. HAMNER: And then he corrected himself and stated I -- it was a
14 dash cam, and I was mic'd up. He corrected himself subsequent to that question.

15 MR. WESTBROOK: All right.

16 MR. HAMNER: I want the record to be clear on that.

17 THE COURT: Okay. All right. Very good. So everyone made their
18 record.

19 MR. WESTBROOK: And also I do -- I do mention under Detective
20 Campbell's file notes, I do say why they're exculpatory. I mean, there's 41 pages. I
21 could go page by page on every page it's exculpatory. But the first three certainly
22 are, and there's also a checklist that was specifically brought up that showed that
23 he didn't follow up on looking for the white tape, and that he had a -- a note to
24 himself to get a search warrant and look for the white tape in Elena's purse and
25 never did it, which shows an incomplete investigation.

1 THE COURT: Well, you -- you got him to admit that in trial anyway, so I
2 don't see how you're prejudiced by -- by that.

3 MR. WESTBROOK: Well, I'm talking about a *Brady* violation in bad
4 faith, not necessarily prejudiced.

5 MS. KOLLINS: Additionally, that was in the handwritten notes. The
6 annotation to look for tape was in the handwritten notes.

7 MR. HAMNER: Not in the folder notes. Not in the electronic notes.

8 THE COURT: You know, I remember that in the handwritten notes.

9 MR. WESTBROOK: Okay.

10 THE COURT: I remember specifically seeing that.

11 So I guess --

12 MR. WESTBROOK: Also turned over late, though.

13 THE COURT: Look, I -- I don't want to --

14 MR. WESTBROOK: That's fine. I've got my record made, Judge.

15 THE COURT: Yeah. You made a record. Look, if you want to submit
16 something separate, try to persuade me again, in light of the evidence that was
17 introduced at trial, I would certainly review it and study it carefully.

18 I was passed a note here that there's a lunch issue for the jury. I
19 don't know what it is. But let's go ahead and adjourn.

20 And what time do you think, 1:15, you'll have the juror
21 instructions done?

22 MR. HAMNER: Yes, Your Honor.

23 MS. KOLLINS: Yes.

24 THE COURT: All right. Thank you very much.

25 Court is adjourned.

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

2 THE COURT: All right. See you all back at 1:15.

3 [Court recessed at 11:44 a.m., until 1:21 p.m.]

4 [Outside the presence of the jury.]

5 THE COURT: All right. *State vs. Azucena*, C-321044. I've got a
6 packet on my -- on my desk. Thank you.

7 MR. HAMNER: We have copies for the jury, too.

8 THE COURT: Oh, okay. Oh, wow. Normally, I just give one for the
9 foreman, but you made one for each of them?

10 MR. HAMNER: Yes.

11 THE COURT: All right. That -- that's fine. That's a lot of copying for
12 you.

13 [Pause in proceedings.]

14 THE COURT: Okay. So are we ready to bring the jury in.

15 MR. HAMNER: I think we need the client.

16 THE COURT: Oh, where's your client?

17 THE CLERK: He just got his lunch. So I don't know. Do you want him
18 to just end it and bring him in?

19 THE COURT: Oh, they didn't know he was supposed to be back
20 at 1:15, right?

21 THE CLERK: They came late.

22 THE COURT: Oh, it came late?

23 THE CLERK: The lunch.

24 THE COURT: Oh. How quickly can we get him here?

25 MR. WESTBROOK: He can wolf it a bit.

1 THE CLERK: He's here.

2 THE COURT: Oh, he's here? Is he eating it back there?

3 THE CLERK: He's right there. Uh-huh.

4 THE COURT: Oh, well, let's give him a few more minute, then. Do you

5 want to go check on him and see how much it me he needs? I'll give him a few

6 minutes.

7 MS. KIERNY: I can do that.

8 MR. WESTBROOK: Thanks, Your Honor.

9 [Pause in proceedings.]

10 MR. HAMNER: Yes, sir.

11 MS. KOLLINS: What's wrong?

12 THE COURT: I don't -- I don't think I can give them the copies because

13 they're not numbered. I mean, unless -- well, I mean, I guess if the parties stipulate

14 to give them the unnumbered set.

15 MR. HAMNER: Oh, I didn't know -- we didn't number them.

16 MR. WESTBROOK: They'll -- they'll need a numbered set, Your Honor,

17 in order to follow along with what we're doing.

18 MR. HAMNER: That would be correct.

19 MS. KOLLINS: Well, we could give them a single numbered set.

20 MR. WESTBROOK: We can just are write the numbers in right now

21 and recopy them.

22 MR. HAMNER: That's true.

23 MS. KIERNY: Or we can all just number real quick.

24 THE COURT: They'll listen while I read them. When I send them back

25 to deliberations can I give them the unnumbered set and they can conform their

1 own. What do you guys want to do?

2 MR. HAMNER: I mean --

3 MS. KOLLINS: I don't have a problem with them putting their own
4 numbers on, do you.

5 MS. KIERNY: I think it's fine.

6 MR. WESTBROOK: That's fine. Yeah.

7 THE COURT: All right. Good. So they'll have one numbered and then
8 the other sets back there that they can all share -- or they can all distribute will be
9 unnumbered.

10 MR. WESTBROOK: Okay.

11 THE COURT: Okay. Good.

12 MS. KOLLINS: Do you have an extra set up there?

13 MR. WESTBROOK: Or do you want to have them number their own
14 copies as we go through? Is that what you were saying?

15 MR. HAMNER: I don't have -- I don't have an objection.

16 MS. KIERNY: Yeah. While they're sitting there, they could number.

17 MR. WESTBROOK: Carli's suggest was with while they're sitting here
18 going through the instructions, they could write the number on the top.

19 THE COURT: Okay.

20 MR. WESTBROOK: That way we can keep them engaged during the
21 jury instruction process.

22 MR. HAMNER: I don't have a problem with that.

23 MR. WESTBROOK: I'm fine with that, too.

24 THE COURT: So the parties stipulate to give them the unnumbered
25 instructions to have while I'm reading the instructions and they can number them

1 while I'm reading them. Parties both agree?

2 MR. WESTBROOK: Sure. Yeah. As long as they're directed by the
3 court what number they're on.

4 THE COURT: I will do that.

5 MR. WESTBROOK: Sounds great.

6 MS. KIERNY: It's like homework, like a play-along activity.

7 Regarding my client and his lunch, he was eating quickly when I
8 already went back there. He said, like, three or four more minutes.

9 THE COURT: Okay.

10 MS. KIERNY: He's got, like, the orange to eat still and half a sandwich.

11 MR. HAMNER: So while we wait, do you want to go through and just
12 finalize these?

13 MR. WESTBROOK: Sure.

14 MS. KOLLINS: What's that?

15 MR. HAMNER: I was saying, while we wait, do you want to walk
16 through each number and we can number them for the parties, Your Honor, for the
17 record? Okay.

18 THE COURT: I'll just -- I don't want to do anything extra. I'll just --

19 MR. HAMNER: Understood.

20 THE COURT: -- put together the numbers -- she's numbering my set
21 and I'll just tell the jurors --

22 MR. WESTBROOK: Right. Just to confirm the very first page is 1,
23 right?

24 THE COURT: Yeah.

25 MR. HAMNER: Correct.

1 THE COURT: So the -- the indictment is 2.

2 MR. WESTBROOK: Great. That's what I thought. Let's make sure we
3 all end with the same number.

4 THE COURT: Yes.

5 MS. KOLLINS: Just for the record, these -- the set that I've proposed
6 and given to the court accurately reflects the changes we discussed earlier today.

7 THE COURT: Thank you, Ms. Kollins, for -- for ticking that task off.

8 [Pause in proceedings.]

9 MS. KIERNY: Now, do you have to sign the copy that we give the jury,
10 or no?

11 THE COURT: I sign the original that the clerk gives to the foreman,
12 right?

13 THE CLERK: Yes.

14 THE COURT: And then it comes back to her for final. Only one -- one
15 set needs to be signed.

16 MS. KIERNY: Okay.

17 [Pause in proceedings.]

18 THE COURT: So 35, is that what you have?

19 MS. KOLLINS: Correct. And there's -- there's going to be a verdict
20 form attached to each one of those packets, so.

21 THE COURT: Let's take that out.

22 MS. KOLLINS: Okay.

23 THE COURT: They don't need to get that, right? No. They only need
24 the one for --

25 MS. KOLLINS: No. They only need one.

1 MR. WESTBROOK: I think one verdict form is -- yeah.

2 THE COURT: Yeah. Let's take off all the verdict forms from the
3 instructions.

4 [Pause in proceedings.]

5 THE COURT: All right. Marshal, we can get the jury now.

6 You guys both ready?

7 MS. KIERNY: Yes.

8 MR. WESTBROOK: We're ready. Thanks.

9 [Pause in proceedings.]

10 THE COURT: This won't confuse the jury that we didn't have a Count 9
11 and now we have a Count 9? Remember we didn't --

12 MS. KOLLINS: We -- we didn't read that -- we read new numbers to
13 them.

14 THE COURT: Oh, we read the new numbers to them? Oh, okay. Is
15 that -- oh, okay. I couldn't remember that. All right.

16 MS. KOLLINS: I think we read the new numbers to them.

17 [Pause in proceedings.]

18 [Jury reconvened at 1:35 p.m.]

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

20 Back on the record in *State vs. Azucena*, C-321044.

21 Just to reconfirm, both sides have -- have rested, correct?

22 MS. KIERNY: Correct.

23 THE COURT: There's no further evidence to be introduced?

24 MS. KOLLINS: That is correct, Your Honor.

25 THE COURT: All right. And the parties have settled the jury

1 instructions.

2 Ladies and gentlemen of the jury, you have another document in
3 your chair this time, not just your notes, but you also have the jury instructions.

4 By law, I'm required to read these. We gave everybody a
5 complete set. You don't have the numbers on yours. I will read the jury numbers
6 as we proceed. There's only -- only the very first instruction is numbered, and then
7 in the upper right-hand corner there are blank spaces. I'll let you know -- just -- I'll
8 let you know what jury number -- what the next number is, so just write the next
9 number right before I start reading the instruction. Okay. You can write it down.
10 It's your choice if you want to write it down. All right.

11 Does everybody have a pen or a pencil? If you don't have a pen
12 or a pencil, raise your hand. All right. Very good.

13 At this point, I'm going to proceed with reading the instructions.
14 This is tedious. I might have to take some breaks. I'm going to read fast, because
15 you guys all have a complete set, so you can follow along. And also you'll have
16 these sets with you back in the deliberation room.

17 [Jury instructions read.]

18 THE COURT: I'll let the District Attorney's Office know and -- and the
19 defendant -- defendant's counsel know that we will proceed with the opening for the
20 State and then I'm going to allow the jurors to take a 15-minute recess. Then we'll
21 proceed with the remaining portions.

22 MR. WESTBROOK: Thank you, Your Honor.

23 THE COURT: All right. All right, Ms. Kollins.

24 MS. KOLLINS: May I just get the equipment switched over?

25 THE COURT: Yes. The State may proceed with its opening

1 statement -- or its closing statement.

2 And, Madam Clerk, could you please switch it over to their
3 monitor. Thank you.

4 MS. KOLLINS: We'll test run.

5 Good afternoon, ladies and gentlemen. Again, on behalf of the
6 Clark County District Attorney's Office, more specifically the Special Victims Unit,
7 myself and Mr. Hamner, we appreciate your time. We know this has been a long
8 trial and there's been a lot of information for you to take in.

9 So my responsibility now is to try to walk you through the law a
10 little bit and show you how we submit to you that the facts in this case apply to the
11 law that the judge has just read to you.

12 In every criminal case, there are two basic questions that need to
13 be responded to by the State. The first one is who is responsible? And the second
14 one is what is the conduct for which the law holds them criminally responsible?

15 So the who in this case, this is not a whodunit case. Nobody but
16 Jose Azucena, Don David, has been identified by any of those kids as the
17 perpetrator.

18 Mirabel, Maradel, Jatziri, Yezline, Scarlett -- and on Nicole's
19 behalf, her sister Yezline. Again, so the who has already been answered for you by
20 the witness statements, by the identifications here in court.

21 Part of the State's burden is to show you what crimes occurred
22 and within what time frame those crimes occurred. You heard the judge just read
23 this instruction to you. When a child is a victim of sexual assault, lewdness,
24 first-degree kidnapping, all the crimes enumerated in that statute, the State only
25 has to prove a timeframe. And this is the law recognizing that kids aren't going to

1 be able to say Monday, May 1st, or Tuesday, May 2nd. So we have given you a
2 timeframe in this case.

3 And if you recall, we had age charts for each one of these kids.
4 The conduct in the indictment is alleged to have occurred between November 1st
5 of 2014 and November 30th of 2016. That is in your packet of instructions. We
6 gave you Mirabel's birthday. She was eight years old when she testified, six to
7 eight years old within the timeframe, and she told you these things happened when
8 she was seven and eight years old.

9 As to Maradel, she's a twin, same birth date. Same page
10 between November 1st and November -- November 1st of '14 and November 30th
11 of '16. She told you these things are -- that she was seven when these things
12 happened, to the best of her memory.

13 Jatziri, her birth date -- she's the older sister, the older sister of
14 the twins. She came in here and spoke to you. She's 10 years old now, seven to
15 nine in the timeframe, and she told you these things happened when she was eight
16 and nine years old, to the best of her memory.

17 Yezline, her birth date was 9/23/08. She's eight years old, six to
18 eight years old during the timeframe. And she told her that her victimization by
19 Jose Azucena happened when she was seven years old.

20 Scarlett, she was the first young lady to speak to you. She's
21 seven years old, six and seven in the timeframe, and told you she was seven when
22 everything happened.

23 Nicole is one year's old. She's still one year's old for about 25
24 more days, and one year's old when the conduct occurred within the timeframe.

25 There's a whole lot of conduct that is charged here. The judge

1 has read to you a substantial amount of instructions. But the basic crimes that the
2 defendant is charged with include lewdness with a child under the age of 14; child
3 abuse, neglect, or endangerment; indecent exposure; sexual assault with a minor
4 under the age of 14; and it looks like I forgot to hit an enter -- there's a second
5 crime in there, attempt lewdness with a child under the age of 14; and first-degree
6 kidnapping.

7 Where I want to start with you in this case before we talk about
8 each of the crimes that the defendant is charged with, is I -- is I want to talk to you
9 about the credibility instruction. And this kind of winds you a little bit back to the
10 discussions we had during voir dire.

11 I want you to think about each one of these kids' manner on the
12 stand. I want you to think about their relationship to the parties, their kid fears, their
13 kid motives. I want you to think about what interest those kids have in the outcome
14 of this litigation.

15 I want you to look at what opportunity do you think these kids had
16 to observe what happened to them and how did they come in here and relay it to
17 you. And this goes, again, back to voir dire.

18 I want you to think about kid mannerisms, kid demeanors. And
19 not only their demeanors in here, but their demeanors that were explained to you
20 by Yusnay and by the moms during the initial disclosure. I want you to think about
21 their relationship to the person they called *abuelo*, the person they called Grandpa,
22 and what motive that may give them to be disingenuous or dishonest with their
23 testimony to you. What are their fears and what are those kids' motives. Can you
24 can impute the alleged motives of the parents to those child -- to those kids? Do
25 you think those kids know or care what a U visa is?

1 This -- and one thing, this -- this kind of leads back to the kid
2 standard that we spoke about.

3 MS. KIERNY: Objection.

4 MS. KOLLINS: I think I've explained it using the instruction.

5 THE COURT: Well, I'll just sustain it. There's no particular standard of
6 care that applies to children, but you are allowed to argue the different aspects of
7 determining credibility with respect to children. That's all I need to say.

8 You may continue.

9 MS. KOLLINS: It is accurate that the law does not have a standard that
10 it calls a kid standard. That is accurate. There is nothing in the NRS that lays that
11 out for us. But what is incumbent upon you in your role as jurors is to understand
12 and at least allow for those different levels of maybe development and how these
13 kids explain to you and testified here.

14 There's going to be a lot of talk about they said A, they said B,
15 they didn't say B every time. And we'll go through that. But one thing I want to be
16 clear right now, kids only answer the questions you ask them. So if you don't ask
17 them every detail, kids do not know to give a global story. Kids don't always know
18 that we're talking to police or we're talking to someone for the purposes of a
19 prosecution. So when you look at their statements and you assess their credibility,
20 I submit to you, they only answer what they're asked. And kids aren't always linear
21 from A to Z, the way adults would be.

22 I want to take you back in this case to the disclosure, because
23 the disclosure in this case really is the inception of the principle and the salient
24 details that these children are able to give you over a course of time. Is the tape
25 always white? Is the tape always yellow? No. But let's talk about the salient

1 details, the big picture.

2 The disclosure was delayed. All three of these girls, the sisters --
3 the twins and their sister Jatziri -- and Yezline, all carried the same fear; they
4 carried the same fear that the defendant is going to hurt mom and dad. And so
5 what did they do? They sat on their victimizations, because they didn't know what
6 to do, because they're kids. Because they're eight. We don't charge them with
7 being as adept as adults. They're eight years old.

8 Chuck E. Cheese, being alone with him, being taken away to the
9 far place where the moms couldn't go, that was the catalyst to this whole thing --
10 this whole thing blowing up for these kids. They did not want to be with Jose
11 Azucena alone. They did not want to be away from their parents and to be
12 molested by him.

13 So what did they do? Kid logic, let's tell the person that he didn't
14 threaten. In kids' minds, that makes sense. A lot of people might think, well, why
15 didn't you go tell Mom? Why didn't you go tell Dad? Because in kid logic, it was
16 smarter to go to Yusnay, because she wasn't covered by Defendant's threat.

17 And they sat on this information probably, as well, because he
18 was Grandpa, and they didn't know what to do. And he was friends with the family.
19 And there were no fights or disputes or anything predating this disclosure. So
20 these kids sat on this information for a while.

21 I want you to think back about what Yusnay said. And consider
22 Yusnay's relationship to the parties. She's been here a year. She's not -- she's
23 conversational neighbors. She's not -- she doesn't babysit these kids. She doesn't
24 participate in a lot of the events and parties that they have sporadically. She has
25 no loyalties to Maria, she has no loyalties to Amanda, and she has no loyalty and

1 barely knows the defendant.

2 But think about what she told you these girls explained to her in
3 terms of looking at the big principle details of this case, the salient factors, the
4 things that remain constant -- look at the first disclosure.

5 Jatziri comes to the door. Hi, are you alone? She's nervous and
6 she's -- she's anxious. Jatziri tells Yusnay, I want to tell you something. You can't
7 tell my mom and you can't tell your husband.

8 Now, does that sound -- do those sound like the initial words of a
9 child who is concocting a story, developing a story, developing a conspiracy against
10 the defendant? If my --

11 MR. WESTBROOK: Objection, Your Honor. This is burden shifting.

12 THE COURT: Overruled. You may continue.

13 MS. KOLLINS: If Mom and Dad find out, they'll be killed. Touched by a
14 man who is called -- we call him Grandfather. His name is Don David. Touches
15 our bodies, touches our private parts. It happens in his house and he shows his
16 penis. That -- Yusnay is the first person at the very inception of this case that
17 gathers that information. And I submit to you, ladies and gentlemen, while it might
18 not be perfect and it might not be repeated identically by every single child every
19 single time, those are the core facts in this case that come out at the very first
20 disclosure. And I submit to you that, globally, these kids are consistent with those
21 facts as they go on to disclose their molestation by the defendant.

22 Jatziri comes in and says to Yusnay, I see the man who pulls out
23 his penis. He touched my parts as I got out of the car. Jatziri tells about Yezline
24 and the tape, because those kids talk. They're friends. They live in a common
25 community, they have common family members, they have, obviously, common

1 geography and common language. They talk. So yes, one of them told the other
2 about the tape incident. Jatziri told about her sisters. Very initial disclosure.
3 Yusnay describes Jatziri as terrified and Jatziri says Mirabel was also touched in
4 the car.

5 So that -- those are the facts that are known just from one child at
6 the very beginning when this comes out. And I submit to you they stay globally
7 consistent and constant throughout the charges in this case.

8 Jatziri leaves and goes and gets the twins. And the twins,
9 Mirabel and Maradel, Mirabel says her *kosa* was touched when they go to eat.
10 That he called them girlfriends. Maradel says that he has told us to go to the house
11 and ask if we want candy. Maradel talks about him placing candy on his penis and
12 that her body was touched and he touched his *kosa* -- touched her *kosa* with his
13 hands.

14 Yezline comes, and if you remember when Yusnay came in here
15 and she spoke to you, she said Yezline's demeanor was the quieter of the four.
16 She was a little more shut down. She was a little more, my word, somber. You
17 look back at your notes for how she described her demeanor. And Yezline tells
18 about being thrown on the bed and her hands being tied and her clothes coming
19 off, and there was tape. And it was Don David. And again, she's not in there when
20 Jatziri's first there, but she still repeats the threat that defendant is going to kill Mom
21 and Dad. He showed his penis and he asked if we want candy.

22 And remember, at this time, there's no Scarlett. Because Scarlett
23 doesn't live there all the time. Scarlett doesn't live there all the time. So how does
24 Scarlett fit into the notion of some conspiratorial action by these kids?

25 MR. WESTBROOK: Objection, Your Honor. That's also burden

1 shifting.

2 THE COURT: Overruled.

3 MS. KOLLINS: Again, remember at this initial disclosure, before
4 Yusnay talks to Mom, she doesn't know the defendant, only lived in the complex a
5 little while. And remember, she doesn't know what a U visa is, nor does she need
6 one. So you can't say she came forward because she had some desire to stay in
7 the country.

8 Is there any evidence, when you're assessing the credibility in
9 this case, of these kids, of these moms -- is there any evidence that revenge was a
10 motive? I submit to you there's not. Is there any evidence that money was a
11 motivation? I think there was one question on cross-examination about Amanda
12 took some money, but it was for some work, and so that was unclear. Has there --
13 is there any evidence in this record that these kids have been manipulated by
14 Amanda, Maria, or Ricardo Rangel? I submit to you there's not a piece of evidence
15 in this record that shows that those kids have been manipulated in order to obtain a
16 U visa.

17 If you're going to impute this alleged motive of the mothers to
18 these kids, if you're going to make that stretch, why pick out Defendant? Why not
19 just pick out a stranger? If you need a U visa to stay in this country, isn't it easier
20 for somebody to just come forward and say a stranger in the park touched my kid, I
21 need to stay here? I need a U visa? Instead of "frame" the man who lives in your
22 neighborhood and who your kids call Grandpa? Isn't there an easier route to the
23 U visa than the one that's chosen, gathering up five kids?

24 Is there any evidence in this case of false memory of these
25 children? Absolutely not. Is there any evidence in this case that these -- that

1 there's suggestibility, that these kids are subject to suggestion? I submit to you
2 absolutely not. Is there any evidence in this case that these kids have been
3 coached? Absolutely not. Speculation is not evidence. Things that are suggested
4 by counsel on either side are not evidence.

5 So when it's insinuated that these children have absorbed their
6 parental motive to get a U visa, I submit to you there's no evidence of that.

7 MS. KIERNY: Your Honor, that's burden shifting. The entire slide is
8 burden shifting. I would ask that it be struck.

9 THE COURT: So overruled.

10 I'll simply remind the jurors it's proper for each side to point out
11 what the evidence -- what they contend the evidence shows or doesn't show.

12 At the end of the day, though, remember, as instructed, it's
13 always the burden of the State to prove each of the elements of the crimes charged
14 beyond a reasonable doubt. All right.

15 With that, you may continue.

16 MS. KOLLINS: Thank you.

17 And -- and these aren't -- these aren't elements of offenses, but
18 these are notions for you to consider. But there's absolute no evidence in this
19 record before you that Amanda Moiza sat down her twins and Jatziri and told them
20 what to say. There's absolutely no evidence in this record that Amanda sat down
21 these kids and told them what to say to forensic interviewers, to the grand jury in
22 this case, or to you here in trial. There's no evidence of that.

23 Because the law recognizes that these crimes occur in secret,
24 there's no requirement that the victim of a sexual assault or lewdness be
25 corroborated. And their testimony, standing alone, if believed by you beyond a

1 reasonable doubt, is sufficient for a conviction. I think we had a little bit of
2 discussion about this during jury selection. I know that seems like two months ago
3 to you now.

4 So words alone are sufficient. Words are enough. Because the
5 law recognizes the circumstance and the environment that these crimes take place
6 in.

7 There is corroboration in this case. There might not be DNA or
8 fingerprints, but this is not a whodunit. DNA is generally a whodunit. These --
9 these kids corroborate each other on the -- on the salient details. They talk about
10 KitKats, candy, and treats. All of this stuff happened at Charleston Gardens. Some
11 of the abuse happened in view of each other. All of them ID'd the defendant. This
12 is what we know. All describe exposure of male genitalia, touching of their own
13 genital areas. And those threats are a common thread with all those kids.

14 Even the last one, Scarlett, who is kind of detached from the
15 group because she doesn't live there all the time, don't tell, don't tell.

16 I'm going to start with the counts a little bit backwards. And I'm
17 doing that so that I don't have to repeat myself.

18 Defendant's victimization of -- of Yezline Estrella was the most
19 pervasive. And because everything that happened to her, save and except a
20 couple counts, will be repeated with other kids. So I start with her. She is in
21 Counts 34 through 36 of the indictment.

22 I want to start -- start with the first-degree kidnaping count. Any
23 person who leads, takes, entices, or carries away or detains a minor -- and I'm
24 going to jump you down to paragraph 3 -- with the intent to perpetrate upon the
25 person of the minor any unlawful act is guilty of a first-degree kidnaping.

1 Lewdness with a minor and sexual assault on a minor are
2 first-degree -- or are unlawful acts. Excuse me.

3 The law doesn't require that the person be carried for a minimal
4 distance. Consent is not a defense. The force or threat of force is not an element.
5 And you need to agree as to your theory of first-degree kidnapping.

6 But I want to talk about the facts as they apply to Yezline in this
7 case. So Yezline came in here and she told you about a day in her own vernacular.
8 She used the word, he pushed me inside. I think she also used the word pulled me
9 inside. I don't know if that's translation. But that's the way I understood it. Your
10 notes may make that different.

11 He pushed me into the apartment, grabbed my hands and put me
12 inside. Tied up my feet and hands with my mouth -- and mouth with tape. Put me
13 on the bed. Took off my clothes, my underwear, my pants, and pulled up my shirt a
14 little bit. And Mirabel talks about seeing her pulled inside.

15 Defendant led or took away or carried away or detained that child
16 under the law, under those facts, as she explained them to you. I submit to you,
17 those salient facts she's been consistent about. I don't care if -- strike that. Excuse
18 me.

19 White or yellow tape isn't a crux of the crime here, ladies and
20 gentlemen. The crux of the crime is this child was taken and placed on a bed and
21 victimized by this defendant.

22 Did he perpetrate an unlawful act on her? Absolutely.

23 Yezline is a victim of sexual assault in Counts 24 and 28. The
24 first count, 24, as I'm going to speak to you about is the count that goes with her
25 being tied up and placed on the bed. A penetration to a child under the age of 14,

1 that's all it takes. Penetration, however slight, fingers in the genital or vaginal
2 opening includes the vagina, the labia majora, the labia minora, the clitoris.
3 Essentially everything that the doctor showed you in that diagram. It doesn't have
4 to go past where the hymen is. That whole area is the genital and vaginal opening
5 for purposes of penetration, and it's however slight.

6 And the doctor explained to you, Dr. Cetl, that you're unlikely to
7 see injuries from this kind of touching or digital penetration. This was not an acute
8 case. We know it was a delayed disclosure.

9 There's no physical force required. In other words, the law
10 doesn't require that kid to fight back. A kid doesn't have to fight back. And you
11 have an instruction that says that.

12 So Yezline was very clear about her sexual assault. She was
13 clear about the big details. She's told you that he took me in there and he tied my
14 hands, my feet, and he put tape over my mouth. Pulled my shirt up a little.
15 Remember that, she said, He touched my belly, pulled my shirt up a little. Touched
16 my hands, touched my boobs, and he kissed me on the mouth. He was touching
17 my thing. I was laying on his bed. He was in front of me with his clothes on, my
18 underwear went near the bed.

19 I want -- I want to talk to you about her sensory descriptions of
20 defendant using his finger on her vagina. Asking a, you know, an eight-year-old to
21 tell you what it felt like when it went inside. It was hot. It moved in circles. She's
22 talking about his finger. I felt it inside. It touched the wet spot where I wipe to pee.
23 I felt him skin to skin. I remember his hand going inside.

24 I submit to you we're talking about a child. She's preadolescent.
25 She hasn't used tampons. She hasn't had a consensual sexual relationship at

1 eight, you would imagine. So those are her words to describe what that feels like
2 when something goes inside.

3 I submit to you she was clear about that. And Defendant's
4 penetration of her is a sexual assault on a child under the age of 14.

5 The law recognizes that it can be fingers, it could be an object, it
6 doesn't have to be a penis. So while we label it sexual assault, it's -- it's a sexual
7 assault nonetheless because it's a finger.

8 Remember when her mother described her disclosure about the
9 sexual assault, Yezline was crying. Her mom told us she was crying when they
10 were sitting in the bathroom. Do you remember that? And he put his fingers in
11 there under my underwear. And that's what she told her mom. And she told her
12 when it happened. There was a time when he told me to go get Grandma to eat,
13 and she wasn't there. Grandma was Elena, Defendant's wife. And he pulled me in
14 the room and he taped my hands and feet. He pulled out the underwear. That was
15 her word -- pulled out the underwear. And touched me. So she was very clear to
16 her mom what happened, as well.

17 Now, the way we have charged the defendant in this
18 information -- or in this indictment -- the sexual assault we just spoke about was
19 Count 25. Yezline is the victim of lewdness with a minor in Counts 26, 27, 29, 33,
20 34, 35, and 36. You'll see that in the indictment by her initials.

21 What I want to explain to you right now is that Count 26, the first
22 count of lewdness with a minor, is in the alternative to the count of sexual assault
23 that we just discussed.

24 So what that means, if you belief that there was a lewd and
25 lascivious act, other than sexual assault, upon the body of the child under the age

1 of 14 with the intent of arousing, appealing, or gratifying to the lust or passions or
2 sexual desires of that person -- being the defendant -- or of the child, that's a
3 lewdness. So that's any sexual touching that's short of -- of penetration or a sexual
4 assault.

5 So the first count of lewdness, again, for Yezline is alternative to
6 the sexual assault. So that means you find just one -- okay. One or the other. You
7 believe those child's words when she talks about penetration and inside and it felt
8 hot and it moved in circles. Or if for some reason you collectively decide that that
9 was not penetration under the law, not penetration -- remember, penetration,
10 however slight, in that whole genital opening, then I submit to you it would be
11 lewdness.

12 And we explained these lewdness instructions to you one time.
13 But they're the same lewdness instructions for all of these kids. The instructions
14 are the same. The facts are going to be a little bit different, but this is part of the
15 reason I did Yezline first, so I didn't repeat the lewdness with the minor instruction
16 every single time we talked about what happened to a kid. Okay. So all -- these
17 lewdness instructions -- I'll just back up real quick -- any lewd or lascivious act,
18 other than sexual assault, with any part of the body of a kid, any part of the body,
19 mouth, chest, butt, legs, whatever it might be, that is touched with a sexual intent,
20 with the intent to gratify the person doing the touching or the child, is a lewdness
21 with a minor. Okay.

22 There's no requirement that anybody is actually aroused. That
23 means the offender doesn't have to become aroused. We don't have to prove --
24 either while it was written that way -- that the child be aroused. Okay.

25 It's not necessary that bare skin be touched for lewdness with a

1 minor. That means you can touch someone through their clothes. You can touch
2 genitals, butts, whatever, over or under the clothes with a sexual purpose, and it's
3 still enough for lewdness with a minor.

4 It must be an act with the body, but no touching is required. And
5 we'll get to why that might be important for some of the counts later.

6 Okay. So back to Yezline. Count 26, again, is lewdness for
7 touching or foundling her genital area.

8 27, touching her butt.

9 29, touch or fondle her genital area. 29 is, again, another
10 alternative count to No. 28.

11 Now, the remainder of the counts that talk about Yezline -- and
12 we'll go through these -- are 34, for placing her hand near the chocolates in his
13 pants, 34 for attempting to place her hand near the chocolate; those are also
14 alternative counts, that means one or the other, if you believe the evidence beyond
15 a reasonable doubt. A count of lewdness for kissing her on the mouth and a count
16 of lewdness for touching her breasts.

17 Now, the sexual assault that we spoke about before, the same
18 facts that I went through before for when Yezline is on that bed in that home, those
19 are the same facts that would support a lewdness if you don't believe that there
20 was penetration in this count.

21 So the same -- you know, I felt it, I felt it skin to skin, it felt hot, I
22 felt it inside; all of those facts that -- where she describes his hand touching her
23 genital area -- they're the same set of facts. You just need to decide as a group
24 beyond a reasonable doubt which one is the more appropriate charge.

25 Yezline talked about her butt getting fondled. The butt is

1 separate from the vagina. She talked about being on the bed. She told Elizabeth
2 that her butt got touched on the tape day. She told Elizabeth that she was
3 touching -- he was touching me with the hand, touched me in the butt over five
4 days. She did say that. And he was touching me in the butt.

5 And this might be a -- a good time to talk about what testimony in
6 this case was evidence. What these kids told you from the stand was evidence.
7 Okay. What each one of them had to come in here and say was evidence. What
8 their moms relayed to you from their initial conversations with them, that is
9 evidence. What those kids disclosed to the forensic interviewer that you listened to,
10 that is evidence. And what those kids told Yusnay, that is evidence.

11 Okay. There are special dispensations for kids of -- in these kind
12 of cases and that's why you're permitted to hear that kind of evidence.

13 Yezline -- oh, did I skip one? Okay. This is the next lewdness
14 with a minor. It is in the alternative to Count 25, which is a sexual assault on the
15 minor.

16 Did I misnumber something? I'm getting myself confused. I
17 apologize. I think that's inserted at the wrong place. It is.

18 She also discussed for purposes of Count 35, she said in here,
19 He kisses me on the cheeks and the mouth. She said, He kisses me on the mouth.
20 I'm sorry. Here in trial she said, He kissed me on the mouth, on the tape day. And
21 then she told Elizabeth, He kisses me on the mouth and he kisses me on the
22 cheeks and the mouth.

23 Cheeks, that might not be a lewdness to a child, but kissing a
24 child on the mouth, a child of that age, I submit to you that's inappropriate and
25 that's with sexual intent. There's no good reason that a grown man should be

1 kissing a seven-, eight-year-old girl on the lips, on the mouth.

2 She talked about also on the tape day, when she explained all
3 the details about how she was being touched and how her vagina was being
4 touched, she told you that he touched her on the boobs. I think the word they used
5 in -- that she used in here was *chi-chis*. And she said he touched her with his hand.

6 When more than one act is committed at a time -- in other words,
7 this day you had a sexual assault, because you have a penetration and you also
8 had him touching her on the boobs and on the butt and kissing her -- those are
9 distinct and separate acts, and the law recognizes those are different parts of her
10 body. And you're free to deliberate on all of those separately.

11 Okay. I don't know if I deleted something over the lunch hour.
12 Excuse me.

13 Counts 33 and 34 are also in the alternative. And those are -- 33
14 is a lewdness. And that is for directing or causing Yezline to place her hands in his
15 pocket near her -- near his genital area to retrieve candy.

16 Count 34 is in the alternative; it's an attempt. So that means an
17 act taken towards the commission of that act that didn't quite succeed in it. So did
18 he -- or did he attempt to cause or direct or encourage her to reach into his pants
19 pockets to get chocolate. So it's -- either it's a completed lewdness for Count 33 or
20 Count 34, in the alternative.

21 So this is what Yezline told us that he did. That he put chocolate
22 on his private part. He would do that inside of his clothes. Yezline said, I had to
23 reach in his clothes to get the candy. I submit to you, that is physical contact. And
24 that is part of her body, and there is no good reason for a grown man to have a
25 small child reach into a pocket near his genital area but for a sexual intent or some

1 sexual gratification of his own. There's no good reason for that, other than a sexual
2 purpose.

3 And she says, I did take the candy. She said to her mom, We
4 would go get the candy and he would rub his part. And then she says to her mom,
5 When we would get the candy, we would throw it out. So I submit to you she's
6 telling you she's retrieved the candy, with her words. I submit to you that contact
7 with her body is enough for lewdness with a minor. It's a touching of a child with
8 the -- it's a lewd or lascivious touching of that child's body, even though it's her
9 hand, but it is for his sexual gratification.

10 There's no requirement that he actually be aroused. Obviously,
11 we don't have any evidence of the child being aroused, and we do not have to
12 prove that under the law, anyway.

13 But it's your decision between 33 and 34, if you believe that
14 Yezline told you enough that there was an actual touching or you believe by
15 Defendant's words and encouragement, that little girl, come get the candy, that
16 that's merely an attempt. So that those two counts are up to you in the alternative.

17 There is my other slide.

18 Yezline discussed a second count of digital penetration, and it
19 was in the car. And this count is alternative to Count 29.

20 Oh, what happened? What did I do?

21 Court's indulgence. I think I did that.

22 [Pause in proceedings.]

23 MS. KOLLINS: All right. I got it. I think I have it. Okay.

24 Count 28 is in the alternative to Count 29. For some reason I
25 had chunked that slide up there before. That's the same discussion we had a little

1 bit earlier about him touching her genital area happening. It doesn't matter if it
2 happened in the car or next to the car. She said it went inside. She said that the
3 twins were there. She felt -- she was clear about that day, that she felt it
4 skin-to-skin and she felt it inside, And I remember his hand going inside.

5 I submit to you that that's enough for a kid to describe to you in
6 that manner that that's enough for penetration under the law. Remember, we're
7 talking about legal penetration, not what lay people, all of us might have thought
8 about penetration before we heard this definition. It's penetration, however slight.
9 So she said it went inside.

10 In the alternative, if that child's words were not enough for you, I
11 submit to you that the alternative count of lewdness with a minor for touching her
12 vagina in the car, near the car, is sufficient.

13 Again, that just shows the alternative Count 29. It -- it reads a
14 little differently. It's the touch or fondle of the genital area. It's the same facts that
15 support 28. Again, she repeats that Jatziri and the twins were there. And, you
16 know, she's a kid. Does she mean they were there, literally there? Or does she
17 mean they were there that day? She's a kid. I submit to you that does not make
18 her incredible.

19 Count 31 is a charge of indecent exposure. And indecent
20 exposure is a person who makes any open or an indecent or obscene exposure of
21 his person is guilty of indecent exposure. It becomes indecent when it occurs at a
22 time and a place where a reasonable man or woman would know that the act will
23 be open to the observation of others. The required criminal intent is established by
24 some action by which a defendant draws attention to his exposed condition or by
25 display in a public place such that it is presumed it will be -- it is intended to be seen

1 by others.

2 Now -- where'd she go -- Count 30 is wherein we talk about
3 Yezline and Defendant exposing his penis to her. She told you that he showed his
4 private part near the back of the car. She then circled for you, in a picture up here,
5 in the parking lot, where that occurred, if you remember, back there in the back
6 parking lot at the Charleston Gardens. She told you it happened more than one
7 time. Remember, all these crimes happened when she was seven and eight.

8 She -- we know she was talking about a male penis, because she
9 circled that for you on the -- on the body chart, if you remember that. Just so we all
10 knew what she was talking about, she circled the male penis for you on the body
11 chart. She said Jatziri and the twins were there. That should come as no surprise
12 to anybody on this jury, because there was a lot of the penis exposure times, the
13 indecent exposure times, where these kids said other kids were around. Other little
14 girls were around. Exposure of -- it was pretty clear that he exposed his penis to
15 her.

16 Now, these facts for exposing his penis are important for you for
17 two counts as Defendant is charged and as the law is written.

18 So as to Count -- sorry -- 31, for indecent exposure and for
19 Count 30 for child abuse. So the facts are the same. And we know it happened
20 more than one time over a course of time. The indecent exposure is -- is pretty
21 self-explanatory. It's exposing your penis in public with the intent that someone
22 sees the manner -- I submit to you the manner with which at least Yezline
23 described this, it was in an open parking lot. It meets the elements of the crime of
24 indecent exposure, and it was done with the intention that these kids see -- and I
25 think just by all of his conduct, by putting candy near his penis, doing all of those

1 things, he intended for these kids to kind of view that part of his anatomy.

2 The child abuse count is a little bit more complicated, as it
3 applies to -- well, let's just talk about first exposing his penis.

4 So a person who causes a kid who is under 18 -- which Yezline
5 is under 18 -- unjustifiable physical pain or mental suffering, because of abuse or
6 neglect, by sexual exploitation, or to be placed in a situation where they may suffer
7 physical pain or mental suffering as a result of abuse or neglect by sexual
8 exploitation is guilty of child abuse, neglect, or endangerment.

9 As written in the instructions, and Judge Scotti read them to you,
10 and I didn't type of all it in my PowerPoint, because it just wouldn't make sense to
11 have you read it absolutely in its entirety, abuse or neglect is any physical or mental
12 injury of a nonaccidental nature. Okay. Including sexual abuse, sexual
13 exploitation, negligent treatment, or maltreatment.

14 What the law goes on to define for you is what maltreatment is.
15 And maltreatment, which is a subcategory of abuse, encompasses exposing the
16 penis. Okay. Maltreatment of a child occurs if a kid has been subjected to harmful
17 behavior -- I submit to you that exposing the penis is harmful behavior -- that is
18 terrorizing, degrading, painful, or emotionally traumatic. I submit to you that
19 repeatedly exposing his penis, coupled with the threats that he gave out and
20 communicated to these kids, that is maltreatment pursuant to the statute, and you
21 can find Defendant guilty of child abuse as it applies to Yezline for exposing his
22 penis.

23 Child abuse, as it applies to the showing of pornography, is a
24 little bit easier, because the statute is a little bit clearer. Abuse or neglect includes
25 sexual exploitation, and sexual exploitation explicitly covers showing pornography.

1 So you can abuse a child by showing them pornography. And that's specifically
2 covered in the statute, without reading you the 16 paragraphs.

3 What did Yezline tell you about seeing pornography? She saw
4 David with the phone. Out of the mouths of babes. The girl was eating the thing of
5 one guy. I submit to you that's kid words, because they don't know what oral sex is.
6 They didn't have clothes on. We were outside. Show -- showed us one time -- and
7 that's what they all said, one time. Remember that? All of them said one time.
8 And Jatziri and the twins were there. I submit to you, those details that she gives
9 you about describing the sex acts that she saw on the phone, I submit to you, use
10 that in weighing her credibility. Those are kid words and that's a kid description.

11 I want to talk to you about her little sister, very briefly, Nicole.
12 She's covered in Count 37. Nicole is one and going to be two, like we spoke about,
13 any day. The defendant's charged with one count of lewdness with a minor for
14 touching or rubbing her body. Nicole was taken to play by the twins and somehow
15 or another, Nicole ends up in the defendant's apartment. And when Yezline goes
16 to retrieve her, what Yezline sees is enough to shake her up to tell Mom he was
17 touching Nicole. Okay. Nicole can't come in here and speak to you because she's
18 one and she's nonverbal. So it was told to you -- the mom described it a little bit
19 with some demonstration. I asked Yezline about this at the end of when she was
20 talking and she didn't have a lot of say about it. I submit to you, you decide
21 whether she's incredible or she's a kid that was just tired and ready to get out of
22 here. But that's the information you have about that.

23 MS. KIERNY: Objection, Your Honor. It's all -- it's burden shifting
24 again.

25 MS. KOLLINS: It's not burden shifting.

1 THE COURT: Overruled. Continue.

2 MS. KOLLINS: I'm going to talk about Mirabel. She's one of the twins.
3 Count 9 is where Mirabel's count starts. She's in Counts 9 through 14. Mirabel is --
4 she's the older twin, if you remember. She is charged -- Defendant is charged with
5 committing lewd acts on her. There are no sexual assaults where Mirabel is
6 concerned. There are only lewdnesses with a minor. So all of Defendant's conduct
7 with this child is touching and exposing and candy retrieval that we've already
8 talked about. So I won't repeat all the instructions for you, but the same lewdness
9 with a minor instructions apply here.

10 And what Mirabel told you is that on one occasion Defendant
11 used his hand or his penis to rub her private area. And she said, He used it to
12 touch my front part, and he also used his hand. She told us it happened more than
13 one time. But as for -- as to this conduct, Defendant is only charged with one count
14 here. It happened outside his house. She circled that power box for you and told
15 you where it happened.

16 If you remember, when Mirabel was explaining conduct to Mom,
17 she didn't want to talk and she was really upset and she was crying, but she did
18 demonstrate for Mom how she was touched, if you remember what the mom said to
19 you. I submit to you those are salient details that haven't changed since the
20 beginning.

21 Counts 13 and 14 are for the candy retrieval, similar to we just
22 talked about, about Yezline. Either you believe that there was touching sufficient
23 and conduct sufficient that Defendant committed the full lewdness, or you believe it
24 was just an attempt, because she didn't quite get there or she didn't quite get the
25 candy. Okay.

1 What Mirabel said was he put candies in the front of his thing and
2 he told Yezline to touch it. If you notice one thing about these girls, nobody wants
3 to admit that they really touched his thing or got near his genitalia to get candy.
4 Submit to you they're embarrassed about that fact. So there's a lot of this one did
5 it -- everyone saw everyone else do it, if you -- if you remember that.

6 But she does say that he wanted me to take candies from
7 Yezline -- from his thing, that she -- he asked Yezline, he asked Maradel, and he
8 asked Jatziri to take. And he asked her to take, but she didn't take them. So -- and
9 he wanted her to touch it. So -- and she talks about KitKats and Skittles, and what
10 was the other one -- Chiclets, and this happened all the time. Or more than one
11 time. I misquoted.

12 So those are Counts 13 or 14. As to whether you think there was
13 enough body contact, I submit to you that there was, but if you don't, then attempt
14 lewdness, Count 14, is the appropriate count.

15 Count 11 applies to Mirabel, seeing Defendant's penis. She told
16 you she saw Don David's part. It was outside the house, near the tree. If you
17 remember, she also circled on the photograph for you. Yezline and her sisters
18 were there. Her -- when I say her sisters, I'm referring to -- obviously, we were
19 talking about Mirabel, so now we're talking about Maradel and Jatziri. It was
20 outside defendant's door. She had visual descriptions for what his penis looked
21 like. It was big and it was brown. Those are visual details, I submit to you. She's
22 also said she saw his thing when she was inside. So I submit to you as to Mirabel,
23 the State has met its burden of proof as to the indecent exposure in Count 11.

24 The child abuse for exposing his penis, it's essentially the same
25 facts that we talked about. It happened outside. It was outside Don David's house.

1 She saw his private part outside his door, but he was inside his house, as well, it
2 happened more than one time.

3 And I think I have a typo on there. I apologize. Apparently spell
4 check didn't pick that up.

5 Child abuse for showing the pornography in Count 12. Mirabel
6 told you that she -- it was on a phone. That is a consistent detail that's been
7 consistent from the beginning. I'll submit to you that the pornography was on the
8 phone. At no time did we ever hear about pornography on TVs or computers or
9 anything like that. It's one time on the phone.

10 The men and women had no clothes on. She didn't remember
11 what they were doing. And her sisters and Yezline were there, and she says Leo
12 was not there.

13 MS. KIERNY: I'm going to object. Misstates the evidence. She said
14 Leo was there.

15 MS. KOLLINS: I thought she said in here Leo wasn't there.

16 THE COURT: Well, you know what, it's going to be up to the jury to
17 decide.

18 MS. KOLLINS: Okay. All right.

19 THE COURT: All right. I -- I have to overrule the objection, because
20 I -- I personally don't recall the specific facts. So it's up to the jury to decide based
21 on their own memory and their own notes, and -- and they can decide if they want
22 to hear a playback. Okay. Thank you.

23 MS. KOLLINS: And ladies and gentlemen, I realize this is long and
24 tedious, but I wouldn't be doing my job if I didn't walk you through the counts. So
25 bear with me just a little bit longer, please.

1 Maradel is charged -- oops -- in Counts 15 through 19, she's
2 MM2 in the indictment. And, remember, Mirabel is MM1.

3 The same lewdness definition that we heard before applies to
4 Maradel. And, remember, any person who wilfully commits any lewd or lascivious
5 act, other than the act constituting the crime of sexual assault, upon or with any part
6 of the body of a child under the age of 14 with the intent of arousing, appealing to,
7 or gratifying the lust or passion or sexual desires of the person, is guilty of lewdness
8 with a minor.

9 So what did Maradel tell you? Well, she was clear that she got
10 kissed on the mouth. And I submit to you, again, grown men don't kiss
11 eight-year-olds on the mouth for a nonsexual purpose. There was sexual intent
12 there. She talked about being touched on the breasts. This is for Count 16, that it
13 happened more than one time. She called it hand on the *chi-chi*. She used the
14 word *chi-chi*.

15 Maradel talked about being touched on the genital area. This is
16 a lewdness count. We've only charged the defendant with one count of touching on
17 the genital area, but what did Maradel tell you about that? She told you that it --
18 first of all, she told you that it happened more than one time. And she told you it
19 happened on the black box, and it happened outside his house, not inside. She
20 said it was over and under her clothes. She said sisters and Yezline were there.
21 My recollection is, was sometimes, but your notes may differ from that.

22 She also demonstrated the action for her mother. And I submit to
23 you, think about -- think when you assess a kid's credibility, think about their ability
24 to physically demonstrate something that is foreign to them. Kids at seven, eight,
25 don't know about being touched on the genitalia and that that's a sexual act. And

1 think about their ability to demonstrate that for you when you assess their
2 credibility.

3 She did say that she told David no. And David told her to shut
4 up. And David told her it's not bad. Told David that you have -- she told David,
5 You have a wife. And he replied, You are my girlfriends. This was within her
6 interview with Elizabeth she said that.

7 MS. KIERNY: Objection. Misstates the evidence.

8 THE COURT: Which part? Well, you know what --

9 MS. KIERNY: This was what her mother said she said to her.

10 THE COURT: Again, I'm just going to refer it back to the jury. They're
11 going to have to decide on their own whether the argument of counsel is correct.
12 It's up to the jury to remember what the facts are from the testimony that they heard
13 and their own notes. And they can ask for a playback if they believe that this is --
14 this is important.

15 Remember argument of counsel is just argument. It's not
16 evidence. All right.

17 Please continue.

18 MS. KOLLINS: Ladies and gentlemen, I do this in an effort to point you
19 to facts. If there's any misstatement of their source, apologies, but that is how I had
20 them contained in my notes.

21 Maradel talks about getting touched on the tail. The tail is *kola*,
22 more than one time, over and under her clothes. Defendant is only charged with
23 one count of lewdness for -- for minor, despite the fact that Maradel says it
24 happened more than one time as to her butt. And as to her genital area, Defendant
25 is also charged only with one count, despite the child saying it happened more than

1 one time in the timeframe.

2 Counts 21 and 22 are back to the candy alternatives again with
3 Maradel. Whether you believe there was touching sufficient to be the lewdness
4 with a minor or -- it looks like -- it looks like I missed an MM1 in there. I apologize
5 for that. We are talking about Maradel here in Counts 21 and 22. Or whether you
6 think Defendant's conduct stopped short of committing the crime of lewdness. So
7 those are in 21 or 22.

8 Here's what Maradel had to say about the conduct that would
9 support the State's charges in 21 or 22. He put them in his thing, referring to the
10 chocolates. Then he would say, Do you want some? There were KitKats. He
11 showed when we were outside. My two sisters and Yezline were there, and he
12 stood by the door when he did this.

13 So Maradel is not -- doesn't say that she put her hand in his
14 pants, so submit to you Defendant's encouragement to take the candy from him is
15 sufficient for an attempt to lewdness, because it's attempting to get her to reach in
16 to take the candy for a sexual purpose and with a sexual intent.

17 Maradel also tells you, in support of Count 19, that she saw
18 Defendant's penis, Don David, outside his house, same tree. Her sisters were
19 there. Yezline was there. She also described his thing as big and brown. And he
20 also did it inside his house, inside the door.

21 As to the pornography, Maradel did not remember that at trial. At
22 one point she said she showed us and she didn't like it. And then she said it was
23 shown to her sisters, but she didn't see it and she was told. I submit to you, she
24 didn't see it. I think she was there and either didn't look at the phone or her sisters
25 told you.

1 So as to Count 12, as it regards -- as it applies to showing
2 pornography in the child abuse, the State did not meet its burden there. It wasn't
3 clear that she actually looked at the phone. And at one point, I think she said it was
4 ugly stuff, but then she said my sister told me. So we certainly don't want to have
5 you deliberate on facts that we don't have.

6 Count 20 is the indecent exposure for Maradel, and we just
7 talked about the facts that support that. That's just the -- the definition again. I
8 won't read it all to you. You have it in your packet.

9 I'd like to talk to you about Jatziri. She's the oldest of the Moreno
10 girls. She's in Counts 1 through 8. She -- if you remember, she's kind of the
11 ringleader of the group. She's the one that kind of led the charge on the Chuck E.
12 Cheese day and went to talk to Yusnay. So she's -- she's a little bit older than the
13 rest of the girls that are involved in this case.

14 Yezline, 10 now, nine when these things happened. First,
15 Count 1, he's charged with kissing her on the mouth. Okay. She remembers one
16 time at trial. She had previously said two times. She told Mom about it. But she
17 did remember one time here where David kissed her on the mouth and she didn't
18 like it.

19 For Counts 2 and 7, Defendant is charged with touching, rubbing,
20 or fondling her genital area. Those are lewdness with a minor counts. Again, these
21 are not sexual assaults where the State's alleging penetration. Okay.

22 She was a little more descriptive, I submit to you, because of her
23 age. He touched me in the front part with his hand more than one time. Touched
24 me at Esther's house and at his house. Those are two counts. Esther's house and
25 then his house. Over and under the clothes -- also separate conduct, over and

1 under the clothes. He did it with his hand.

2 When she first discloses to Yusnay, she told Yusnay, He touches
3 my body and he touches my private parts. Consistent with what she told you here
4 in trial, consistent that -- what she's been is that David has touched her in different
5 geographical locations, sufficient to support the charges and in different locations
6 on her clothes in terms of over and under.

7 She, too, this child was able to demonstrate conduct that I submit
8 to you she shouldn't know to her mom about how she was touched -- being touched
9 on the genitals. I submit to you that when these things happened, she was able to
10 talk to -- she was able to articulate to you that those threats by the defendant to kill
11 moms and dads were at or close to the time she was being touched. So she was at
12 least able to couple those with you, give you at least some time frame, like he was
13 threatening me right after he touched me or close in time to when he touched me;
14 my words, not hers.

15 The alternative counts for the candy in Count 6 and 7 for Jatziri. I
16 can't tell you how many times I had to remember these kids' names in the course of
17 this case. I always call them the wrong thing. I recognize their faces. It's -- those
18 are -- these are the same alternatives that we talked about before. Either enough
19 body contact, the encouraging them to get the candy for a sexual purpose is a full
20 lewdness with a minor, or it is an incomplete crime or an attempt crime for
21 encouraging or directing or touching their hand and getting it close to his genital
22 area. And what facts --

23 THE COURT: Can I interrupt you for a sec?

24 MS. KOLLINS: Sure.

25 THE COURT: When I look at the verdict form, 6 says attempt lewdness

1 and 7 says lewdness.

2 MS. KOLLINS: Okay.

3 THE COURT: So what's the correct alternatives here? Do you -- do
4 you mean 5 and 6? Or -- or do you mean 6 and 7 and just have them...

5 MS. KOLLINS: I mean 5 and --

6 THE COURT: Let's just clarify that before we have the jury go
7 deliberate. It would -- you can do that with your reply.

8 MS. KOLLINS: Actually, the court's right. And that's why -- that's why
9 you do these before the night before, you know. That's why you do these two
10 weeks ahead of time. It just never works out that way.

11 This should be 5 and 6.

12 THE COURT: 5 and 6. Okay. Thank you.

13 MS. KOLLINS: And so they are in the alternative. I can -- I can go
14 erase my slide for you right now, if you like. But here's the conduct that Jatziri talks
15 about that support Counts 5 and 6.

16 We went to his house to get some chocolate and the one day
17 she's -- initially she's talking about, Mom told us to hurry. So he -- and on that day,
18 he put the chocolate on his part and he took his part out of his pants and we got the
19 chocolate out of his hand. Remember when she was showing you, use the sleeve,
20 my sisters used the sleeve to grab the chocolate. She says she didn't touch the
21 chocolate after he touched his part. She said it was KitKats or Kisses.

22 I submit to you that encouraging to use her -- encouraging her to
23 use her hand to retrieve that chocolate is at least an attempt lewdness with a minor
24 under the age of 14.

25 But she kind of describes how her sisters got the chocolate and

1 she kind of -- she says she didn't touch it, but she described the whole incident and
2 being there and being encouraged to get the chocolate. So I submit to you that
3 Count 7 -- excuse me, Count 6 is the appropriate verdict.

4 Same definition for indecent exposure as it applies to Jatziri.
5 What did Jatziri say? She talked about one time -- and besides the chocolate time
6 that he talked about that he got his penis out -- she talks about another time where,
7 His wife took us to his house. His wife being Elena, and Elena left. And they were
8 there. And he took out his part. And when he asked her what part was, she said it
9 was the part that he uses to go pee, that it was brown and big. And he took it out of
10 his pants. She said that she saw David's penis more than one time, but only that
11 one time in the house.

12 Jatziri was able to describe the pornography and we're talking
13 about Count 8, child abuse by sexual exploitation by showing pornography. She
14 said that there were people on the phone. They had no clothes on. They were
15 kissing. It was outside her house. It was only one time. Sisters, Yezline -- she
16 says Litzi was there. I think Litzi said at trial she was not there. And she described
17 the woman was eating the thing of the man.

18 I submit to you that's not -- kids don't know about oral sex. So
19 that's the way they describe it, because they don't know, at nine years old, what
20 that is.

21 When she told her mom about it, she told her mom that Grandpa
22 shows videos where people -- this is how she described it -- where people are
23 getting married and the guy gets on top of the woman and that's how they get
24 married. I don't know if you remember that. And she said there was no bra and no
25 underwear on the woman in that video when she saw it.

1 I want to -- I forgot to talk to you about Count 3. So let's go back
2 to that. It struck me as I clicked through those. I'm trying to hurry up, because I
3 know this is so repetitive.

4 Child abuse for exposing his penis. It's the same conduct that we
5 talked about, but it is child maltreatment by showing his penis. And those are in the
6 big child abuse instructions that is we discussed earlier. It is a theory of child abuse
7 by maltreatment for exposing his penis.

8 Scarlett Rangel -- Scarlett was first in here. And I'm discussing
9 her last in Counts 38 and 39. Scarlett is part of the group on the weekends, but not
10 necessarily part of the group all the time. Defendant did not have the access and
11 the proximity to Scarlett that he had with the rest of those kids. Scarlett didn't even
12 know his name. Do you remember that? She just called him the little old man.
13 She doesn't remember his name. She just knows what she saw.

14 And so Scarlett is a victim, I submit to you now, the evidence is
15 in. The State has given you the evidence of these allegations, and now I feel
16 comfortable in saying Scarlett was a victim of indecent exposure in Count 39.

17 Here's what Scarlett told you way back, week and a half ago,
18 close. The man showed his part. It was his private part, while she was at Lorena's,
19 the babysitter. Lorena is the babysitter that lives in the Charleston Gardens. She
20 circled the man's private part for you on the diagram, because she didn't want to
21 say it.

22 She said that the man was inside the door of his apartment,
23 remember? And then she circled the door on the picture and showed us where the
24 man lived. She still just called him the little old man. She told you in here she
25 didn't know his name and she didn't want to point at him. Remember, she didn't

1 want to point at him, but she did ID him for you here in court, David Azucena is the
2 man that exposed his penis to that child. And she said it happened when she was
3 seven.

4 She also did a photo lineup at the police department and she
5 signed her name, Scarlett, to the picture that she picked out. And the picture that
6 she picked out for the Las Vegas Metro detectives was defendant Jose Azucena,
7 also known as Don David.

8 And she told you that he told her, be quiet and don't tell anybody.

9 Count 38 is the child abuse count -- child abuse count for
10 Scarlett. Abuse includes maltreatment, and maltreatment of a child occurs if the kid
11 is subjected to harmful behavior that is terrorizing, degrading, painful, or
12 emotionally traumatic.

13 I submit to you, the exposure of a male penis to those kids,
14 across the board, terrorizing and degrading. I submit to you that the State has
15 given you sufficient evidence to find Defendant guilty of child abuse for Scarlett,
16 regarding exposure of the defendant's penis.

17 I want to talk to you just a little bit about -- just a few minutes
18 before I wrap up. Again, thank you for your time in detention.

19 You know, you have to use your common sense in this case, and
20 you have a jury instruction that tells you to do so. You're not to speculate. You're
21 not to guess. Unanswered questions, things that are outside this courtroom, are
22 not evidence. Things that you don't have answers to confined to this courtroom are
23 not evidence. Certainly --

24 MR. WESTBROOK: Objection, Your Honor. That misstates the burden
25 of proof, and it's burden shifting.

1 THE COURT: What was -- what did you say again?

2 MS. KOLLINS: I said unanswered questions about the evidence are
3 not evidence.

4 MR. WESTBROOK: That is incorrect, Your Honor. They have the
5 burden of proof. Unanswered questions are the fault of the State.

6 MS. KOLLINS: I -- I'm not saying whose job it is to --

7 THE COURT: Well, so overruled. Let's just -- wrap it up.

8 MS. KOLLINS: Okay. I'll wrap it up.

9 The point is, don't speculate. There's a jury instruction that tells
10 you not to. Reasonable doubt is a concept and a theory that's used in every
11 criminal case in every courtroom across the country. Okay. It's -- it's not an
12 unfathomable standard.

13 You're going to go back in the jury room. You're going to get a
14 verdict form that looks like this. Your foreperson is going to have it. I submit to you
15 the State has given you evidence to find Defendant guilty beyond a reasonable
16 doubt.

17 I thank you for your time and attention these last two weeks, and
18 thank you for your attention this afternoon. I know this was long. Thank you.

19 THE COURT: Thank you, Ms. Kollins. All right.

20 Ladies and gentlemen, I'm going to give you a 15-minute break
21 now. During this recess you're admonished do not communicate among
22 yourselves or with anybody else about this trial or the subject matter of the trial; do
23 not communicate at all with any of the parties, attorneys, or witnesses involved in
24 this trial; do not seek or obtain any information or comments about the case from
25 my source including, without limitation, newspapers, television, radio, Internet,

1 e-mail, cell phones, or any other electronic device; do not read, watch, or listen to
2 any report of or commentary about the case; do not form or express any opinion on
3 any subject connected with the trial until the case is finally submitted to you for
4 deliberations; do not perform any research or investigation.

5 You are directed to be back here, let's see, 15 -- let's see, let's
6 say, 3:53. All right. 3:53. Be back here at that time. Thank you.

7 [Jury recessed at 3:36 p.m.]

8 THE COURT: All right. Almost outside the presence. We're going to --
9 outside the presence of the jury.

10 So Ms. Kollins.

11 MS. KOLLINS: Yes.

12 THE COURT: So I just want to make sure that I got the alternatives.

13 MS. KOLLINS: Yeah. I -- I apologize for that.

14 THE COURT: 5 and 6 are -- and I wonder if we need to give that to the
15 jury, like, because we didn't -- it's not on the verdict form.

16 MS. KOLLINS: Well --

17 THE COURT: But they can't -- because they can't -- they can't convict
18 on both 5 and 6, right?

19 MS. KOLLINS: Yes.

20 THE COURT: And then I also have 13 and 14.

21 MS. KOLLINS: Just one second.

22 THE COURT: And then -- are you following me?

23 MS. KOLLINS: I -- I was going to just --

24 THE COURT: All right.

25 MS. KOLLINS: Sorry.

1 THE COURT: 5 and 6 are alternatives.
2 MS. KOLLINS: Correct.
3 THE COURT: All right. 13 and 14 are alternatives.
4 MS. KOLLINS: Correct.
5 THE COURT: 21 and 22 are alternatives.
6 MS. KOLLINS: Correct.
7 THE COURT: 25 and 26 are alternatives.
8 MS. KOLLINS: Correct.
9 THE COURT: 28 and 29 are alternatives.
10 MS. KOLLINS: Correct.
11 THE COURT: And then 33 and 34 are alternatives.
12 MS. KOLLINS: Correct.
13 THE COURT: Right. But I know I got that. I'm not -- don't know if the
14 jury got it all. I don't want the jurors to be confused when they fill out this form and
15 convict on counts that they can't convict on.
16 MS. KOLLINS: Well, the -- in truth and in fact, Your Honor, they can
17 convict. You just don't sentence.
18 THE COURT: No. I know, if they convict on attempt or not attempt,
19 then -- then what do I do?
20 MR. WESTBROOK: You -- you dismiss the -- the repeated counts.
21 THE COURT: Yeah.
22 MR. WESTBROOK: Yeah. Both repeated counts or just one of the
23 two?
24 MS. KOLLINS: No. If -- if --
25 THE COURT: I mean, if they convict on attempt or not attempt for

1 lewdness, then which one goes, the attempt or the nonattempt?

2 MS. KOLLINS: Okay. If they convict --

3 MR. WESTBROOK: I'd like to tell you it's the lower one, Judge, but it's
4 the higher one.

5 MS. KOLLINS: It's not -- it's the higher. So they convict on the
6 lewdness --

7 MR. WESTBROOK: The higher one stays.

8 MS. KOLLINS: -- and an attempt lewdness, the lewdness conviction
9 stands, the attempt goes away.

10 THE COURT: Okay. And sexual assault or lewdness, then the sexual
11 assault goes away? It's the --

12 MS. KOLLINS: No. The lewdness goes away.

13 THE COURT: The lewdness goes away.

14 MR. WESTBROOK: Right.

15 THE COURT: Okay. All right. I just -- I -- so we -- you're convinced
16 with us not giving anymore clarification to the jury on the alternatives?

17 MR. WESTBROOK: I'm not sure about that, Your Honor.

18 THE COURT: Do you want to cover it in -- in your closing?

19 MR. WESTBROOK: We don't want to cover it in our closing, because
20 we're saying he's innocent of all these things.

21 THE COURT: Would you want me to say anything more to the jury?

22 MR. WESTBROOK: If you feel that it's appropriate, that they don't
23 understand which ones are in the alternative, which seems like a reasonable
24 approach, then that's fine.

25 THE COURT: Well, I -- I would be able to get it from her closing.

1 MR. WESTBROOK: Sure.

2 THE COURT: I don't know how -- hopefully the jurors were following.

3 MR. WESTBROOK: I -- I think that if Mr. Hamner wants to talk to -- to
4 the jurors about that during his closing, that would be more appropriate.

5 We're saying that he's innocent of all of these things, so it
6 wouldn't be appropriate for us.

7 THE COURT: All right.

8 MR. HAMNER: I mean, I -- I mean, I can kind of touch on it. Look,
9 my -- my position would be, and Ms. Kollins, tell me if I'm wrong -- I mean, I'd say,
10 listen, ladies and gentlemen, the evidence shows both of these are here. Why we
11 did it was they're in the alternative. You're free to check them both if you want to,
12 but the purpose was in the case that you didn't think a sexual assault actually
13 happened, and you just thought he wasn't penetrating, but still rubbing that area,
14 you have a lewdness here that you can check.

15 MR. WESTBROOK: Honestly, they're not free to check them both.
16 They have to choose one or the other. They are in the alternative.

17 THE COURT: Well, if they chose them both, I have to eliminate one of
18 them. So.

19 MR. WESTBROOK: Correct. And, Your Honor, also, I would -- what I
20 was saying about the higher one reign, if they choose both sexual assault and
21 lewdness for a single count, the sexual assault does reign. However, if they
22 choose both attempts and a completed one for the same count, that's a different
23 story altogether. Because if they find that there's an attempt, it's incongruent with
24 finding completion. Those two cannot stand, and I would say both of them would
25 actually have to be eliminated.

1 THE COURT: Yeah. All right. Well, look, can I raise it, because --

2 MS. KOLLINS: It depends on the theory, though, David, I disagree.

3 THE COURT: -- I've been in many trials where -- where issues arise
4 due to, you know, the way that jurors fill out the verdict form. And I'm giving you
5 guys a chance to anticipate a potential problem and allow you -- this is your case --
6 to fix it if you want. I'm not going to say anything unless you guys ask me to.

7 MS. KOLLINS: Well, I guess the only record I want to make -- I was
8 listening to Mr. Westbrook, I wasn't --

9 THE COURT: Yeah.

10 MS. KOLLINS: I didn't know he was making a record. There are
11 different theories under the lewdness and attempt lewdness for the candy counts
12 that you could --

13 THE COURT: Yeah.

14 MS. KOLLINS: -- you could think he completed a lewdness or you
15 could think he completed an attempt, where they could stand. But we still argue
16 that they're alternatives. So I don't necessarily think that they're inconsistent.

17 THE COURT: Well, let's -- well, I don't need to decide that now,
18 fortunately. So I just wanted to raise the issue and see if there's anything more I
19 needed to say to the jury. Let me think about a little bit more. Thank you, guys.

20 MR. WESTBROOK: Your Honor.

21 THE COURT: All right. So --

22 MR. WESTBROOK: I'm sorry, before you leave, Your Honor --

23 THE COURT: Yeah. Oh, hold on. There's something more he wants
24 to put on the record, guys.

25 MR. WESTBROOK: Sorry, Your Honor.

1 THE COURT: Do -- do they know? Do you guys care? He's making a
2 record.

3 MR. HAMNER: I'm sorry, we were speaking.

4 MS. KOLLINS: Yes, David.

5 MR. WESTBROOK: I have a proposed instruction --

6 THE COURT: Oh.

7 MR. WESTBROOK: -- to -- to cure. This is -- this is the second time
8 Ms. Kollins has brought up this kid standard, which does not exist.

9 I think it's highly prejudicial and it's inappropriate. There is no
10 second standard, as the court has told the jury, both in her opening, when you
11 stopped her from staying it, and then again in her closing, when you had to stop her
12 from saying it again. She was warned in the past. She brought it up again. Highly
13 conditioning to the jury, and highly prejudicial to my client. It really -- it goes right to
14 the standard of proof. And it lowers it.

15 I have a proposed instruction. I would propose it as 9.1 so that
16 would --

17 THE COURT: Did you show it to her?

18 MS. KOLLINS: No.

19 MR. WESTBROOK: I'm going to show it to her right now. Proposing
20 as -- I just wrote it -- proposed at 9.1. It would go directly after the credibility
21 instruction in the packet.

22 The proposal is this:

23 There is no special or lower standard for determining the
24 credibility or believability of a child witness.

25 And that's it.

1 MS. KOLLINS: And Your --

2 THE COURT: Well --

3 MS. KOLLINS: And Your Honor, obviously, the State's opposed to that.
4 Does the court want to hear from me or do you want to just rule?

5 THE COURT: Well, I think -- I think I covered it by telling them there's
6 no -- there's no standard. It should -- that you have to apply the factors, you know,
7 and you have to apply the factors as they relate to children.

8 And there's -- there's certainly a different evaluation for children
9 than you would do for adults, because the factors apply differently. But does that
10 mean a different standard?

11 MR. WESTBROOK: It's not a different standard.

12 THE COURT: Because standard just -- standard connotes -- connotes,
13 like, a statute or some kind of written benchmark. And I -- I think Ms. Kollins said
14 that there is no -- there is no, like, law or -- or statute that sets a standard. So I
15 think she covered it.

16 MR. WESTBROOK: But -- well, her entire argument is somehow these
17 kids need to be held to a lower standard, simply because they're kids. They still,
18 under the law, have to be credible; they still have been to be believable; and they
19 still have to provide evidence that it's proof beyond a reasonable doubt.

20 THE COURT: Well, of course.

21 MR. WESTBROOK: And she's labeled this twice now as a kids'
22 standard, and she's bookended the State's case with it.

23 THE COURT: Yeah. I --

24 MR. WESTBROOK: The jury's going to be confused, and they're going
25 to hold them to a lower standard as a person.

1 THE COURT: -- yeah, I -- I don't want to give anything more to the jury
2 than what we gave.

3 MR. WESTBROOK: May I submit this, then, as a court exhibit?

4 THE COURT: Of course you may, yes.

5 MR. WESTBROOK: Thank you.

6 MS. KOLLINS: Well, and just for the record, the court is correct that I
7 did say there was no special standard. I did point them to the factors and the
8 credibility statute. My argument in no way ameliorated my burden of proof.

9 THE COURT: You made a record, too. All right.

10 Writing down offered after State's closing. Rejected by court and
11 initialed it. And I'll give that to the court clerk.

12 MR. WESTBROOK: And to be clear, that was a curative instruction
13 that I proposed. Thank you, Your Honor.

14 THE COURT: All right. So we'll take a break.

15 [Court recessed at 3:43 p.m., until 3:58 p.m.]

16 [Outside the presence of the jury.]

17 THE COURT: All right. Anything else before I bring the jurors in?

18 MS. KIERNY: No, Your Honor.

19 MR. HAMNER: No, Your Honor.

20 THE COURT: All right.

21 [Jury reconvened at 3:59 p.m.]

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

23 All right. We're back on the record.

24 And at this point in time, Ms. Kierny, the defense may present its
25 closing argument to the jury.

1 MS. KIERNY: Thank you, Your Honor.

2 Need to be switched over.

3 Good afternoon, ladies and gentlemen. Hey. My client, Jose
4 Azucena is not guilty of every single one of these charges. Before we get into the
5 evidence, though -- oops -- I wanted to talk to you a little bit about the justice
6 system.

7 Now, our justice system is awesome, and it's wonderful because
8 what it does is it protects everyone. It protects everyone who is accused of a crime.
9 And everybody who walks in here, whether they're a millionaire's son or a beggar
10 on the street, they protect everyone the same. Whether they're a lowly defense
11 attorney accused of something or a judge up in their robe. Everyone is protected.

12 And how does our justice system manage to do that? Well, it
13 presumes everyone innocent. Everyone that walks through those doors to have a
14 trial by jury is cloaked in this presumption of innocence. And we require the
15 accuser, which is the State in this case, to do all of the proving.

16 What that means is that the accused doesn't have to prove
17 anything. In fact, we don't have to do anything.

18 Now, if myself, my client, and Mr. Westbrook decided after jury
19 selection to leave, we went to see a movie one day and then we came back for a
20 few witnesses and then we left for a while longer, went to lunch, et cetera, if after
21 the State's close of their evidence, you still believe that they had not proved this
22 case beyond a reasonable doubt, even though we didn't say anything the whole
23 time, you would be -- you would have to find the defendant not guilty.

24 Obviously, we didn't do that. We did do things. We did object.
25 We did cross-examine witnesses. And we did present witnesses. But I want

1 everyone to be certain that by calling those witnesses, we're not assuming any sort
2 of burden. What those witnesses were there for is so that we could show that there
3 are reasonable doubts in the testimony of the State's witnesses.

4 What happens if we require someone to prove their innocence?
5 Well, it doesn't work out very well. We've got the Salem witch trials to history to
6 remember, where there were about 20 people. They were accused of being
7 witches. And it was up to them, contingent on them to prove, well, I'm not a witch.
8 They did not succeed. They were put to death. And it's a very dark period in our
9 history. And it shows how hard it is to prove something that didn't happen.

10 We don't have the Salem witch trials here. What we have is our
11 justice system, and it is much better. That is because it is demanding. Our system
12 of justice demands that the State prove every single element of every single
13 charge. And it demands that they do it beyond a reasonable doubt, the highest
14 standard in the land. It's not, you know, I think something might have happened.
15 No. They need to prove it by proof beyond a reasonable doubt. It's not, well, they
16 kind of proved it or proved something. No. It is proof beyond a reasonable doubt.

17 And -- and why is that? It's because the justice system will not
18 take chances on a false conviction.

19 All right. Proof beyond a reasonable doubt -- the question is
20 never in this case whose story do you believe? What side's story makes more
21 sense? The question is always -- the question will also be -- did the State prove
22 this case, every single element of their case, beyond a reasonable doubt? That is
23 the question you should have in your mind when you listen to these arguments.
24 That is the question that you should have in mind when you're deliberating, when
25 you're talking to your fellow jurors. And in this case, they did not. They didn't even

1 come close.

2 All right. So to meet this high standard, this proof beyond a
3 reasonable doubt, that is the highest of any standard in our country, what has the
4 State given us? Just words. Words alone. That's all we have to go on, on these
5 serious charges.

6 Sorry, my clicker is not the greatest.

7 Now, the State is going to say that there's a jury instruction right
8 on point here. And that the jury instruction tells you that, you know, words alone
9 can sustain a conviction. Yeah, they can, if you believe those words beyond a
10 reasonable doubt. It doesn't mean just because somebody says something that it
11 must be true or that that is proof. You still need to test the words. Test the words
12 every step of the way.

13 All right. In this case are there reason -- can I -- can I point to
14 reasonable doubts? Absolutely. I have compiled a couple of my most compelling
15 reasonable doubts for you guys that I want to point out now. When we're going
16 through the evidence, there'll be a whole lot more things that I mention that I
17 believe are reasonable doubts. For example, when -- when one of the accusers,
18 Jatziri, says that there was an incident in the kitchen where she was touched,
19 where her sisters, the twins were touched at the same time, when Yezline was
20 touched, and when a girl named Litzi from the neighborhood was there, as well.
21 And not a single one of those people recall that incident. In fact, Litzi says she was
22 not in the house at that time. That is a reasonable doubt.

23 When Jatziri volunteers to Elizabeth Espinoza about a time
24 where Yezline -- where Don David put candy inside of Yezline's part, and then later
25 in the car, when she was with Jatziri's dad and the other girl, she pulled out the

1 candy and had them smell it, and not a -- and she doesn't mention it again on the
2 stand until asked on cross, and she -- none of the people who were allegedly
3 witnesses to that mention it at all, including Yezline. That's a reasonable doubt.

4 When Mirabel says she witnessed Yezline being pulled into Don
5 David's apartment, taped -- and put -- tape put on her mouth, and there were the
6 other girls with her -- Maradel, Jatziri, and Litzi, and none of them mentioned what
7 would obviously be a traumatic experience to see. And she goes further to say that
8 immediately she went to go tell Yezline's mom what happened. We heard from
9 Yezline's mom. Yezline's mom didn't say that. Those are reasonable doubts.

10 When Maradel says that she never looked at the phone. She's
11 very -- she's very clear about that. But the other girls say there were times when
12 she was there, when the phone was shown, when different things were shown on
13 that phone. That is a reasonable doubt.

14 When Yezline testifies that she was dragged into the apartment,
15 her legs and her hands were taped, and then her clothes were taken off, her pants
16 and her underwear. And that is physically impossible to take off clothes once your
17 legs are taped together. That is a reasonable doubt.

18 The fact that multiple witnesses in this case described the tape
19 being gray, they described it being yellow, they described it being white, and its
20 changed through time. That is a reasonable doubt.

21 Litzi's entire testimony raises many reasonable doubts. There
22 were many times that I'm going to go through where the girls said that she was
23 present for things. No, she says no, she didn't see any of those things.

24 Leo's entire testimony also raises many reasonable doubts,
25 because there were a lot of times the girls said he was present for things, things

1 that would even make him a victim of those things -- of those incidents. He says,
2 no. Didn't happen.

3 The fact that every single one of the parents who testified in this
4 case has sought a U visa, and their husbands, in some way, is a reasonable doubt.

5 I wanted to talk a little bit about lies. And -- and kind of what we
6 look to about lies, because it'll be part of my presentation when we talk about the
7 evidence in this case. The best lies have some tiny shred of truth.

8 Let's -- we all know fishing -- a fishing story. A guy goes, gets his
9 boat out, gets his tackle box, goes fishing. Comes back and says, I caught a fish
10 this big, but he got away.

11 There is some truth to that story. He -- he did go fishing. He did
12 go in his boat. He did have a reel.

13 There is some not truth in that story. He didn't actually catch that
14 fish. In fact, maybe he dropped his tackle box in the -- in the river and didn't catch
15 any -- or can't catch anything.

16 There's a little bit of truth that makes that story worth telling.

17 There's a little bit of truth in these cases, and that's -- or in this
18 case, and a little bit about -- truth about what the girls keep saying.

19 Mr. Azucena did give these kids candy. He gave many kids in
20 the complex candy. Now, maybe the fact that he gave them candy was the little bit
21 of truth that got these kids started on these stories. But they're inconsistent stories
22 as they went, their constant changing, their constant contradictions shows you that
23 these are not true.

24 The other thing about lies -- the other thing about this remote -- is
25 that it's terrible.

1 MR. HAMNER: Do you want to -- do you want to switch?

2 MS. KIERNY: I don't know if it'll be on the same frequency.

3 [Pause in proceedings.]

4 MS. KIERNY: All right. Also, the truth doesn't change. When you tell a
5 lie, the thing is, unless you want to reveal your lie, you've got to keep lying.

6 Real quick example. Mom makes some cookies for a bake sale.
7 Leaves them out to cool. Kids get in there, eat the cookies. Mom comes back, Did
8 you eat the cookies that I made for the bake sale? Kid says no. First lie. Real little
9 lie. Okay. Then why is there chocolate on your face? Uh, it's not chocolate, it's
10 dirt. Have to keep lying. Well, then, who ate the cookies? Dad. Oh, Dad came
11 home? Yeah. He was here for a minute and then he had to go back to work. He
12 forgot something.

13 This lie that started out real little, you've just got to keep lying,
14 unless you want to initially admit the first lie. So once you lie, you -- the lies just
15 keep coming.

16 All right. So how do we know if this is -- if a story or if what is
17 being told is truthful? Especially when we just have stories, we just have words in
18 this case. Well, we talked about this in jury selection. One thing you look for is
19 consistency. Are these stories that are told, are they the same? Or does the story
20 change throughout time? Are the stories that are told by different witnesses -- or do
21 they match up? Do they lend credence to each other? No. That's not true in this
22 case. We don't have consistency.

23 The other thing you might look for is corroboration. Maybe some
24 sort of physical evidence or outside evidence besides the words that tends to back
25 this up. I know the jury instruction says you don't have to have it, but sure, it would

1 be really nice when you're judging credibility. There is no corroboration in this
2 case. We don't have any physical evidence. No DNA, no fingerprints, because
3 Detective Campbell didn't even look.

4 We also don't have corroboration in terms of witnesses. When
5 we went out and found those witnesses mentioned in their statements, they don't
6 agree. They don't say that the things that are attributed to them seeing actually
7 happened.

8 And, finally, the last thing that you assess is credibility. And does
9 this person have a motive to lie? Has this person lied before? And you know what,
10 in this case, we have tried our best to give a motive. I certainly think that the U
11 visas would give motive to lie.

12 However, if you don't think that that's true, you can still -- you can
13 reject our U visas theory entirely. This might be a situation where -- where the kids
14 said something that was small, and it blew up to be a big thing when the parents
15 jumped on board.

16 We don't have to prove that. We don't have to -- we're not
17 assuming that burden.

18 So if you don't have the consistency, you don't have the
19 corroboration, you don't have the credibility, you have no case. State cannot prove
20 their case beyond a reasonable doubt.

21 All right. The first witness that I want to talk to you about is the
22 Cuban lady. I know her name is Yusnay, but a lot of the people in this case
23 referred to her as the Cuban lady, so I'm going to keep with that.

24 Per Amanda, they didn't know her well. She'd only lived there
25 about four months. They only said hi and bye. She didn't have kids. She didn't

1 babysit the girls. They didn't know her at all. So why go to her? Why go to this
2 woman who is basically a stranger to tell your deepest, darkest secret? To tell
3 something that you are afraid will get you killed, will get your parents killed?

4 Like I said, she only lived there four months. And I think that she
5 testified that when Jatziri came over, and then later when she brought all the other
6 girls, she didn't even let them in her house. All these conversations occurred out
7 on the stoop.

8 These kids every day wake up, they see their family. Some of
9 them even have other family members who are not mentioned in the threats, that
10 live with them, such as their actual maternal grand -- or I don't remember if it was
11 maternal or paternal, but they do have grandparents who live with them. They have
12 family members who live nearby that they could tell. Every single weekday, for
13 second grade, for third grade, they go to school. They see teachers. The teachers
14 that they trust. Teachers that they've known -- that they know for every year. They
15 don't tell any of those people about what happened. They tell the Cuban lady.

16 This would be a good time to talk about threats, because we've
17 got this kid logic idea that the kids didn't tell anybody but Yusnay, because she
18 wasn't specifically mentioned by name. However, the threats weren't always
19 consistent as if you tell Mom and Dad, I will kill Mom and Dad. The threats were
20 testified to very differently by different people.

21 Yusnay herself said on direct that what Jatziri told her is if I tell
22 anyone, he will kill my mom and dad. Anyone. Anyone would include Yusnay. So
23 this kid logic, this loophole doesn't hold up.

24 And we heard from Elizabeth Espinoza, and Yezline confirmed
25 this, she didn't even believe the threats.

1 All right. The interesting thing about the Cuban lady's testimony
2 is that her memory actually improved with time. You all have heard the expression,
3 memory brightens with time, right? No. That's not an expression. The memory
4 is -- the expression is that memory fades with time.

5 So when she was interviewed by the police, she didn't know
6 everyone's names. In fact, she told -- said Yezline was the friend. She called the
7 twins the twins -- didn't know their specific names. Only knew Jatziri, which makes
8 sense; Jatziri is the leader, Jatziri is the oldest.

9 She testified on the stand that she could tell the twins apart.
10 Very few people in this case have been able to do that. And then she actually
11 attributed very specific details to each child that she said that child told her X. A lot
12 of these details that she attributed to those kids are different from what the kids
13 even told us on the stand.

14 For example, Mirabel, she attributed the specific incident where
15 she said that Don David took them to McDonald's, and when she was getting out,
16 touched Mirabel's vagina. Mirabel didn't testify to that incident.

17 Mirabel also testified that when this meeting went on with
18 Yusnay, she didn't even talk. So these specific memories that are attributable to
19 each children are suspect.

20 The Cuban lady didn't tell everything to the police. There are a
21 lot of things that she told the police -- or that she testified to that were more or
22 greater than she had told to the police. And the police interview was, you know, a
23 couple days, a week or two after the girls allegedly disclosed to her on the 16th,
24 when she testified here in front of you guys, six months later.

25 All right. So she didn't say anything about the threats, which isn't

1 that the reason that they told Yusnay? She didn't say anything about the kids riding
2 in the car, which seems like an important detail. She didn't say anything about a
3 McDonald's trip. She didn't tell the police one thing about Mirabel being touched on
4 her part in the car.

5 She also didn't say anything about the word grandfather. And I
6 highlighted that because to me, I remember Yusnay up there, having a very specific
7 memory about this word grandfather, where she said I was very shocked. I was --
8 in my country, we do not say grandfather for anybody. We say grandfather when
9 it's, you know, your mom or your dad's dad. So this was a very surprising term for
10 her. And she never told the police that important detail?

11 She didn't say anything about him call -- Don David calling the
12 girls his little girlfriends. She didn't say anything about Don David -- that the girls
13 told her that the -- that Don David allegedly exposed himself to them. And in what's
14 going to be a continuing theme in this case, she didn't say anything about candy on
15 the privates to the police when she interviewed with them. She didn't say anything
16 about Yezline's feet and hands being taped. She did say something about a mouth
17 being taped. But neglected to say anything about the feet and hands.

18 So why did she tell the police everything? Well, I mean, she
19 gave us some reasons. They don't really hold up. But one of them was the stress
20 of the situation, that these girls had just told her that this happened, and she was so
21 upset that she, you know, it was a stressful situation, and also it kind of went along
22 with the anxiety over talking to a male detective.

23 Yet, you know, in a more stressful situation, up here on the
24 witness stand, in front of ladies and gentlemen of the jury, she remembered more
25 things and -- and talked about all these things that she said she was too

1 embarrassed to tell a male detective. She also said that when she talked to the
2 police, time had gone by. Yes, two weeks had gone by. Yet, somehow, her
3 memory got better six months later. And she insists that the girls told her
4 everything she testified to that day. So everything that she was relaying on the
5 stand she insists is from the girls.

6 She also had kind of an odd reaction to the girls' disclosure.
7 They told her that a man -- you know, according to her -- that a man is touching
8 them, that a man is threatening to kill them, threatening to kill their parents, he has
9 a car, he has the possibility of taking them away.

10 So, of course, she ran over and told the parents right away. No.
11 She didn't do that. She was worried about interrupting their party. Or she called
12 the police because these girls are in immediate danger. No. She didn't to that,
13 either. She waited until the next day. And then Amanda found her.

14 She made a big deal about the fact that she only saw Don David
15 one time after these allegations were made. But she also only saw him one time
16 before. So I don't know, that's neither here nor there.

17 She did testify that she probably talked to Amanda since, and
18 has not talked to the kids about this.

19 I'd say it's pretty clear that she's talked to Amanda, because now
20 she remembers the names of the kids and can attribute specific things to them.
21 She also knows about a party going on that night, which, realistically, she would
22 have no way of knowing because she was not invited to that party, she didn't say
23 she saw anything about the party. Where her apartment is situated, she would not
24 have been able to see that they were having a party. So the only way she could
25 have gotten that information was probably from Amanda. She didn't mention the

1 kids telling it to her, and she told us -- she told us everything the kids said.

2 And we also learned, ultimately, down the road from Professor
3 Kagan, that the Cuban lady has a very different immigration status from everyone
4 else that we talked about in this case. She does not need a visa. Once a Cuban --
5 before January 1st of 2017, once a Cuban person makes it to the country, they
6 were not going to be deported.

7 And you know, there's been testimony about does Yusnay know
8 what a U visa is or -- or questions about that or would she qualify? It's pretty clear
9 that she's a witness. She wouldn't be under the protection of that, you know, prima
10 facie case that people qualify for. It has to be your family or you that suffer these
11 alleged crimes.

12 All right. Next person that testified was Amanda. She talked
13 about her relationship with the Azucenas. She's known them eight years. She
14 begrudgingly told me, yeah, David works. Tried to say he didn't work a lot. Elena
15 does not work, and Elena is around more.

16 She also testified that they have four dogs -- not chairs. They
17 actually have the dogs. What I pointed out was the chairs, but anyway. The
18 interesting thing about these four dogs and that after that, besides the
19 don't-you-love-your-dogs comment, no one ever testified about the dogs. There's
20 multiple incidents here where Don David is allegedly open -- standing with a -- with
21 the door wide open and no mention about the dogs getting out. There are incidents
22 where he is dragging girls into his apartment, taping them. No mention of the dogs
23 barking. And then Yezline -- in that same incident, the door was allegedly left open
24 the entire time; no mention of the dogs.

25 Amanda said that he would give candy and presents to the girls

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1 in her -- in her presence. She didn't see any issue with it. Obviously, she didn't see
2 him rubbing it on his parts or anything like that or else she wouldn't have let her
3 girls eat that candy.

4 The date of the disclosure, Amanda said, you know, she'll
5 remember that day. It's burned in her memory as, obviously, the 16th. Although,
6 she did, it seems, tell the grand jury it was actually the 17th that the girls told her
7 what was going on. She disputes that. It's a small point.

8 The initial disclosure -- on the stand what she said is, very
9 clearly, the girls told Maria or Esther -- she's referred to as both her first and middle
10 name in this case -- and then Esther told Amanda what was going on with the girls.

11 At a previous hearing, Amanda testified that Jatziri told Amanda
12 first and then Amanda went somewhere to tell Maria/Esther.

13 You know, there was some discrepancy over whether she walked
14 across -- you know, down a hallway, in a bathroom, or whether she came from her
15 apartment to go tell her. But the order was very clear, that Jatziri said something
16 first, and then it was incumbent upon Amanda to tell Maria/Esther.

17 And then Amanda testified that she kicked everyone out,
18 including Esther, out of her own house so that she could talk to all the girls,
19 including Esther's daughter. And then later she talked to the girls at home with her
20 husband.

21 The mention of the husband was for the first time. On the stand,
22 she hadn't said anything about her husband being there to the police when she
23 talked to them. Apparently her husband didn't say or do anything when his three
24 girls told him that they were being molested and the man who did it was, you know,
25 in that apartment complex, a couple buildings away. He didn't ask questions.

1 Didn't say anything.

2 Amanda talked about what Jatziri told her. And Jatziri told her
3 that she was touched on her *paparucha*. That's not a term that Jatziri ever used
4 with Elizabeth Espinoza or anyone. And then she also testified that Jatziri
5 immediately told her that the man kisses her on the mouth.

6 This is very different from what she told police. In fact, what she
7 told police is that, you know, there were things coming out every day. In fact, later
8 she -- later, after this conversation, she found out that Jatziri was kissed. So, you
9 know, different timing there.

10 The Chuck E. Cheese incident -- she says that that's what Jatziri
11 told her at that time, that she didn't want to go with Don David, because Don David
12 is going to take her to Chuck E. Cheese and he's going to take her away forever.

13 None of Amanda's girls said anything about the Chuck E. Cheese
14 incident to Ms. Espinoza when they were interviewed most immediately to the
15 crime.

16 Also, you know, this is a good time to ask, if the State's theory
17 is -- is that he wants to get this unfettered access to the girls and he wants to take
18 them away from their parents by taking them to Chuck E. Cheese, why would he
19 tell them, I'm going to take you far away and never return you? That's more of a
20 threat. If he's really trying to groom them and get them to want to go with him,
21 wouldn't you say I'm going to buy you all the tokens you want, you can win a giant
22 stuffed animal?

23 Anyway, to Amanda, according to Amanda, Jatziri told her
24 grandpa shows us videos where people are getting married. That isn't the phrase
25 that Jatziri used on the stand.

1 Mirabel's disclosure, Don David touched her thing hard. And
2 Mirabel talked back at that point, said, Don't touch me, it's bad. According to
3 Amanda, Don David told her, Shut up, it's not bad. Mirabel doesn't repeat this
4 conversation to Elizabeth Espinoza, to the grand jury, or on the stand. And then
5 she says that, Grandpa showed us stupid things on his phone. She doesn't classify
6 any of the things she saw as stupid at any other point.

7 Maradel's disclosure, Don David touched her *kosa*. And then she
8 gave this back and forth that Maradel said to Don David about don't touch me, you
9 have your wife. And he replied, No, I don't love that crazy woman. You are my
10 girlfriends.

11 Maradel doesn't repeat this very descriptive, memorable
12 statement.

13 Also it raises the question of, you know, she seems to be talking
14 back to Don David, this person that she's allegedly very scared of, thinks he's going
15 to kill her and her entire family. It's one or the other. And it doesn't seem like
16 something a child would say or know that, you know, you have -- you touch your
17 wife in that manner.

18 She said that -- to Amanda -- Amanda's account was that she --
19 that Maradel looked at bad things on Grandpa's phone. What she said on the
20 stand, she never saw anything on the phone.

21 Yezline's disclosure, pretty bare bones to Amanda. Amanda
22 remembered Yezline saying Don David would tie hands -- only mentioned the
23 hands. She said very clearly that Don David touched her in the bathroom of his
24 house. Yezline does not say that. She's very clear about a bed. So there's some
25 discrepancy here. Didn't mention seeing things on a phone to Amanda.

1 Amanda testified about something that no one else testified to,
2 that Don David would take watermelons and strawberries and rub them all over his
3 private parts and then force the girls to eat them. She said that for the first time
4 when she was on the stand. She never repeated it to anyone in this case. She
5 also said that he caressed one of the twins.

6 Amanda testified that Don David did take the girls on trips, which
7 going back to the Chuck E. Cheese thing, if the State's theory is that what he
8 wanted was unfettered access to these girls, where he would take them away from
9 his parents and freely touch them, he had already taken them to McDonald's. He'd
10 already taken them to the 99 Cents store. So he had access to them before he
11 wanted to take them to Chuck E. Cheese. I don't know why this Chuck E. Cheese
12 incident is such a watershed moment.

13 Amanda then testified she walked into the police station
14 on 10/17. Detective Garris said very uncommon for people to walk into the police
15 substation. I don't know. That's all I have for Detective Garris. I thought I'd include
16 him since he came in.

17 Why didn't she tell the police everything? Well, she says that
18 because day after day my girls were coming up with new things, more and more
19 things every day. Kind of like that fish tale? But this is also the opposite of --
20 what -- what Yusnay gives for a reason. She says that the girls told Yusnay
21 everything, but Yusnay was then too nervous to say it.

22 Whereas Amanda says that the girls didn't say everything at -- at
23 first, and the reason her memory is better now is because she has been told things
24 since. Amanda talked to them for longer. Amanda is their mother. Amanda would
25 have the superior details when it first happened.

1 Then we learned about Amanda's immigration status, as well.
2 She does not have any. While her kids were born here, her husband is also here
3 illegally. She has no path to citizenship or even any sort of status besides that
4 U visa.

5 Contrary to what the State said in their opening, Amanda testified
6 she knew about U visas before October 16th, before the date that she reported this
7 incident. She says she's not worried about deportation, yet she's filled out all the
8 paperwork, gone down to Hermandad Mexicana, procured a police report, put all
9 that in, followed all the steps. Do that with -- and if --

10 Obviously, you know, when the State is up there asking Amanda,
11 is it true that you made all this -- is it -- it's not true that you made this up for status
12 or this actually all real -- really happened? I'm paraphrasing, of course. They didn't
13 say it that awkwardly. Obviously, she's not going to say, oh, yes, that is true. If she
14 had admitted the allegations were false, there would be no U visa for her. The.

15 Ricardo Rangel also testified. He heard from Amanda that her
16 girls had made allegations against Don David. Amanda was paid to pick up
17 Scarlett from school. She also had another babysitter, Lorena, who happens to be
18 Leo's mom. Then he talked to Scarlett, and the first thing she says, is No, nothing
19 happened. And then he asked her again, and then she says she saw the man's
20 part one time. She tells her dad she was with Yezline. And he also said -- she also
21 says the man caressed Scarlett's shoulder. Caressed? That's Amanda's word.

22 Ricardo said -- told Officer Schmidt -- according to Officer
23 Schmidt when he testified -- that the man had touched Scarlett's private part. It's
24 never repeated again. And Ricardo described the man as the twins' grandfather.
25 As you'll see, you heard from Elizabeth Espinoza, Scarlett didn't know the man's

1 name, didn't know how to identify him. In fact, referred to him -- referred to him as
2 the little old man throughout her statement.

3 Sometimes I get ahead of myself and none of the words come.
4 Okay.

5 Ricardo also testified about an incident that happened in
6 February of 2015, where Scarlett -- Scarlett's mom and Ricardo were engaged in
7 some sort of custody dispute. And Scarlett's mom had Scarlett say that Ricardo
8 punched her in the mouth to a CPS officer, law -- which is pretty close to a police
9 officer. He testified he didn't do this, that it was a lie, and that CPS, in fact, returned
10 Scarlett the following week.

11 But if you need any proof that kids can be put up to things by
12 their parents, look no further than this story.

13 Ricardo, also we learned about his immigration status. He has
14 none. He overstayed a visa, his temporary visa, so that puts him in the no-status
15 category as well. His children were born here. That doesn't afford him any special
16 treatment. He has no path to citizenship, just like Amanda. He testified that he had
17 previously actually been subjected to removal proceedings, although he was not
18 deported. He does know what the term U visa is, and he has, in fact, consulted
19 with a private attorney to obtain a U visa, because he thinks they could do a better
20 job than Hermandad Mexicana.

21 Maria Esther Barajas, she's referred to as both, so I included
22 both names. She appears to go by her middle name, as well. She testified that
23 she frequently spent time with Amanda and the kids. But even she doesn't know
24 the twins by the name -- by name.

25 She's friends with David's wife, Maria Elena. His wife -- and she

1 says, Maria Elena she spent more time with. Maria Elena was frequently alone,
2 because David works two jobs. And Esther would feel bad for Maria Elena and
3 would invite her to eat.

4 Esther's testimony was the girls told her they didn't want to go to
5 Chuck E. Cheese, and then the girls told her Grandpa touched them. Jatziri was
6 the main person talking. Jatziri is kind of the leader. That's kind of a theme in this
7 case. And her testimony is that Yezline did not say anything during this -- this first
8 conversation. She actually didn't say anything to her until later, which is different
9 than Amanda's recollection.

10 I -- I'm going to talk about the tape incident. I've given all of
11 these charges some sort of name so that we can try to compare them. I'm not
12 trying to be flippant about it. It's just a way that I can compare them to you guys
13 without getting into too much detail.

14 So what Esther says is that she had Yezline go over to invite
15 Maria for dinner and Maria was not there. David pulled Yezline in and taped her
16 hands, feet, and mouth. Yezline never said anything about going over there to
17 invite Maria and then Maria not being there. That was all from Esther.

18 According to Esther, Yezline told her that he touched her part in
19 the bathroom and kissed her mouth, then let her go. There was a back-and-forth
20 between my co-counsel, Mr. Westbrook and Esther, about whether she ever said
21 that she noticed a day where Yezline had glue on her lips.

22 Previous -- at a previous hearing, she said there was glue on her
23 daughter's lips. Now, on the stand, she says no, that didn't happen. I -- I don't
24 remember that. I -- I meant her lips were gray. Either way, what she said is that
25 she can very clearly remember that that same day her daughter came home and

1 she was very scared. And either there was glue on her lips or you know, her lips
2 were gray from fear. And Yezline sat on the couch. But Esther never asked her
3 what was wrong, never followed up. That is a reasonable doubt.

4 Esther testified that Yezline did not tell her the day that the tape
5 incident happened, that what happened -- Yezline said she did on the stand.

6 And also Mirabel, you know, gave this description of running to
7 Esther and telling her what was going on with Yezline. Mirabel didn't tell her what
8 happened that day, either, according to Esther. And then there was this discussion,
9 Mirabel was pretty clear -- or told Ms. Espinoza that the tape -- the day that Yezline
10 was grabbed had been the previous Friday, which Detective Campbell wrote in his
11 notes is October 28th, which other people wrote as 10/28, which is after the girls
12 had disclosed -- Esther didn't say anything about any incidents happening after the
13 girls had disclosed.

14 All right. Esther did testify about something involving Nicole.
15 There was a time that she says the girls took Nicole, who is one, out of the house
16 without permission for some period of time. Jatziri says, I wouldn't take her without
17 permission. Per Esther, Yezline said that day, when she was disclosing to her, she
18 saw Don David rub Nicole on his part.

19 Well, when Esther was interviewed by the police about this case,
20 she never said anything about Nicole. Didn't mention Nicole. She said something
21 different at grand jury. She said that Don David rubbed Nicole -- Nicole's body, but
22 never said anything about rubbing it on his part.

23 Yezline never mentioned anything about Nicole to the police.
24 And when she was testifying on the stand, it -- she had a hard time saying anything
25 happened. She had to be reminded by the State, and finally said, I guess, you

1 know, we -- I saw Don David holding Nicole. It does not go along with what her
2 mom says she said on the 16th.

3 All right. We also learned about Esther's immigration status.
4 She doesn't have any, though her children were born here, her husband is here
5 illegally, she has no path to citizenship or any sort of legal status. She testified that
6 she doesn't even want the U visa. But she filled out the paperwork, and she's
7 already been certified, which, as you remember from Professor Kagan, means she
8 actually has some protection already.

9 She testified that her husband is getting status through her sister,
10 which according to our immigration expert, Professor Kagan, that that doesn't
11 happen. But her husband also filled out the U visa paperwork. And, obviously, if
12 she would have been on the stand -- or to say that there's anything false about
13 these allegations or that she doubted the girls or didn't cooperate, she wouldn't be
14 eligible for a U visa, either.

15 The next witness the State called was the first child in this case,
16 Scarlett Rangel -- Rangel. I butcher these names, I'm very sorry.

17 She's -- you know, she testified about split custody. She named
18 her friends at her dad's house as Jatziri, the twins, Yezline. Doesn't mention Litzi,
19 doesn't mention Leo, even though that's her babysitter's son. She said -- she
20 testified she saw the man's part one time. She testified she was alone, even
21 though she told her dad she was with Yezline when she saw the man's part. She
22 told Ms. Espinoza she was with Yezline when she saw the man's part. And Yezline
23 never mentioned Scarlett at all.

24 Jatziri was the next to testify. Jatziri testified about a touching.
25 She said Don David -- on the stand, that Don David touched her front part both at

1 his house and at Esther's house. There were no details whatsoever given about
2 being touched at Esther's house. No indication that she'd ever told her mom,
3 Esther, the police, a grand jury, or anyone that she's ever touched at Esther's
4 house. And, in fact, it didn't seem like there was even a time when she was alone
5 with Don David in Esther's house. This came out for the first time, it's a new detail.

6 She said that Yezline and her sisters were present when Don
7 David would touch her front part. She never mentioned anything about Litzi on
8 direct. And when I asked her, she did say, yes, Litzi was there, as well. But she
9 didn't mention that until I asked her about it, even though she had told the police --
10 or when I say the police, I mean Ms. Espinoza, I'm sorry. Even though she had told
11 Ms. Espinoza that about Litzi.

12 All right. The only -- the two incidents she told Ms. Espinoza
13 happened in Don David's kitchen, touched in front of Yezline, Mirabel, Maradel, and
14 Litzi. She saw David touch Yezline. She saw David touch Mirabel and Maradel at
15 the same time.

16 Yezline never testifies about any sort of incident happening in a --
17 happening in a kitchen. Mirabel and Maradel never testify about anything
18 happening in a kitchen. Mirabel and Maradel never say anything about being
19 touched at the same time.

20 Litzi was in the house with them, according to Jatziri.

21 Litzi testifies; no, she was never in the house with just the girls.
22 There was never a time that she saw Don David touch any of the girls.

23 Jatziri testifies about the phone incident. He -- she says that Don
24 David showed girls video one time. And there was people kissing each other in
25 bed. She didn't say anything about eating the part of the man. That was Yezline.

1 It was incorrectly attributed to Jatziri. She said that the people kissing each other in
2 bed had their clothes on, which might not even be pornography.

3 But anyway, on -- and then she said it was on Grandmother's
4 phone. She was very clear to Elizabeth Espinoza that it was a pink phone. And as
5 you recall, everyone else described the phone as black.

6 You know, it might seem like a small detail, but pink is a very,
7 you know, vibrant color. Black is a pretty standard cell phone. These are very
8 different details. No one mentions a pink phone. It's a reasonable doubt, ladies
9 and gentlemen.

10 Jatziri said that she saw Don David's part. She tells three
11 different stories on this. One to Ms. Espinoza, only saw it once. She was coloring
12 by Litzi's house. Don David is inside his house. Testifies to the grand jury, she
13 was outside with Yezline, the twins, and some boys, including Leo. On the stand,
14 more than once; one time in his house, wife was there, another time outside by the
15 power box with the twins.

16 I went a little too fast, but at any rate, her story's all over the
17 place.

18 Jatziri testifies -- testified about candy. On the stand she said
19 Don David would put chocolates in his part. And he would take them out himself.

20 The State says this is an attempt and not an actual lewdness.
21 She said Jatziri told us that the girls would, you know, cover their hands with their
22 sleeves so that they could take the candy. And none of the other girls mentioned
23 ever covering their hands with their sleeves to get candy. She also said she would
24 touch his hand. And like I said, the sleeve's incident not corroborated by others.
25 She never told Ms. Espinoza when she was interviewed immediately about

1 anything about the candy going in Don David's parts.

2 Well, she did volunteer some information to Ms. Espinoza about
3 Don David putting chocolate in Yezline's part. She wasn't asked specifically about
4 this incident, because no one had brought it up before that.

5 Yezline took chocolate -- apparently this chocolate was put inside
6 of her part by Don David. They then went in the car with Jatziri's dad. Yezline took
7 the chocolate out in the car, had the other girls smelling it. And no one wanted to
8 eat it.

9 She didn't talk about this on direct. No one else mentioned this
10 incident. It's a very bizarre incident. It's a -- it's a reasonable doubt.

11 Mirabel Moreno -- she was the next witness. She testified to
12 touching, as well. Don David would touch her thing over her clothes only. She said
13 on direct that he would touch her thing with his thing and with his hands. And this
14 happened outside by the power box with Yezline and her sisters.

15 To Ms. Espinoza she said that she would -- that he would touch
16 her thing with his thing while he had his clothes on, with Yezline, her sisters, and
17 some boys, including Leo. No one ever testified about him using his thing to touch
18 anyone.

19 And -- and she also said that Don David's hands were outside
20 while he touched her thing with his thing, so that, you know, it's not a situation
21 where she testified to Ms. Espinoza -- told Ms. Espinoza that he was using both at
22 the same time.

23 Mirabel said, I told my mom the first time he touched her. But
24 she also said on direct that Yusnay was the one who tell -- told Mirabel's mom.
25 And she was pretty clear that she didn't say anything during her meeting with

1 Yusnay, so there's no reason for Ms. -- for Yusnay to describe any abuse that
2 occurred to her. But she did say something about the girls disclosing to Yusnay
3 instead of her mom, because she was scared her mom would hit her if they told her
4 about the abuse.

5 All right. Mirabel talked about trips -- I'm going to put all the trips
6 that everyone testified to in one slide here, just, you know, so I'm not bringing up
7 this minor point with everybody else.

8 Don David, according to Mirabel and her sisters -- or according to
9 Mirabel, Don David took Mirabel, her sisters, and Yezline to McDonald's and the 99
10 Cents store. Maradel also remembered these trips.

11 According to Amanda's testimony, when this happened, these
12 trips, especially the McDonald's trip, Don David would touch Mirabel and Maradel
13 on their parts -- no, on their butts. Oh, sorry. I got it confused. To Yusnay, they
14 said that they were touched on the butt during these parts. I actually think that I
15 have that backwards. I think that they told Mom they were touched on the butt,
16 according to Mom. They told Yusnay that they were touched on the part, according
17 to Yusnay.

18 But neither of these girls on the stand mention anything about
19 touching on any of these trips. They do say the trips happened, but they don't say,
20 And that's when he touched me. Don't give that information.

21 Yezline, for her part says, no, never went to McDonald's or 99
22 Cents store with David.

23 All right. Mirabel says she actually saw Don David drag Yezline
24 into the apartment, saw Yezline trying to scream. There was gray tape on her
25 mouth. She could not scream. Don David closed the door. And Yezline testified

1 the door was open the entire time. Jatziri, Maradel, and Litzi were present, as well.
2 And then Mirabel says that she told Yezline's mom. Yezline's mom says, no, that
3 never happened.

4 They both can't be right. That's the thing about all of these
5 stories. When people tell stories that have so many contradictions, you have to
6 believe one or the other, or throw everyone's testimony out.

7 She also says that Grandmother came home and saw Yezline
8 tied up. Yezline doesn't say that. Mirabel said that she saw Don David's thing. On
9 direct she says it was outside with Yezline and her sisters. To Ms. Espinoza she
10 told her it was outside when she was with some boys, including Leo, who, as we
11 know, said he never saw Don David's thing.

12 Mirabel does talk about a phone. She saw some men and
13 women in bed on Don David's phone.

14 My notes that I took say that Leo saw it, too. And, obviously, Leo
15 testified he never saw anything on a phone.

16 Mirabel testified that Don David put candy in front of his thing, but
17 no one ever took the candy. It's different than what all the other girls testified to,
18 and as we know, no one -- none of the girls ever told Ms. Espinoza about Don
19 David putting any candy in his parts whatsoever.

20 Maradel Moreno -- she testified to touching of -- by Don David
21 with his hand over and under her clothes. She is insistent it never happened in his
22 house, which is directly contrary to what Jatziri testified to. She says that this
23 happened outside, with her sisters and Yezline. No mention of Litzi on direct,
24 although when I asked her on cross, she did say, yes, Litzi was there, too. Litzi
25 says, no, I never saw Maradel touched. And she also told Ms. Espinoza that Litzi

1 was present when David touched Maradel.

2 I've got a typo there. I'm sure there's not the first.

3 She also is very clear she only went in Don David's house with
4 Grandmother. So again, direct contravention to what Jatziri testified to.

5 Maradel, phone incident. Don David had a phone, but Maradel
6 never looked at it. Jatziri later told her what was on it. All the other girls say that
7 there were times when Don David was showing them various things, their
8 descriptions are never the same, but that Maradel was there too. She never saw
9 anything on the phone.

10 State says this count they didn't prove, Count 23. I agree.

11 Maradel saw Don David touch her sisters over and under the
12 clothes, which is different than what Mirabel said. Mirabel said personally, she's
13 only touched over her clothes.

14 Overall, Maradel didn't give us a lot of details. It's really hard to
15 compare all the things that she said to the previous statements and to other kids,
16 like when she's talking about the time that he touched her breasts. No specifics
17 about, you know, timing, summer, fall, any of that. She could not remember where
18 it took place. She said, I don't remember. But she does remember her sisters and
19 Yezline were there. None of them mentioned a time Don David touched Maradel's
20 breasts.

21 Don David also touched her butt. Again, no specifics. This was
22 one that she said no initially and then had to be reminded by the State that she had
23 previously testified to touching his butt, and then she said, oh -- well, she didn't say
24 exactly, oh, but she then agreed to that account. She says only Mirabel was there
25 when that happened.

1 Mirabel doesn't mention that.

2 Maradel says that she saw Don David's thing outside and in Don
3 David's house, so more than one time. And her sisters and Yezline were there, as
4 we recall. She doesn't give any specifics on time, place, or what it looked like.

5 She says that she told Yusnay instead of her mom, because she
6 didn't want her mom to be upset and she didn't want to get in trouble with her mom.
7 She was worried her mom would hit her.

8 Yezline testified about a tape incident in where she says Don
9 David pulled her into his apartment, but he left the door open. Again, no mention of
10 where the dogs were. She says that the -- his wife was not there, contrary to what
11 Mirabel said. And that this happened in his bedroom, whereas with her apparent
12 disclosure to her mom and to Esther was that this happened in the bathroom. And
13 that's a very different setting. Because in the bathroom, she'd be standing up. In
14 the bedroom, she testifies to being pushed on the bed, face up. They can't all be
15 true.

16 These very different descriptions of the times she was touched
17 are reasonable doubts. She says that he taped her -- her feet, her mouth, and her
18 hands. On the stand it was yellow tape; to Ms. Espinoza, it was white tape.

19 And then with her hands and feet taped, he took off her clothes --
20 her pants and he took off her underwear. You can't take someone's pants off while
21 their hand -- their legs are taped together, or underwear. She had told
22 Ms. Espinoza something different. She said that he took off her pants and her top,
23 then and told the grand jury her top was off, but her underwear stayed on.

24 Yezline also testified that he kissed her on the mouth when she
25 was taped. Was that over the tape? When he touched her private part, it tickled.

1 She didn't say inside until the State then reminded her that maybe at a different
2 time she might have said it was inside. Told Ms. Espinoza the hand went outside
3 where you pee. Later within that interview, said maybe it went inside where you
4 pee.

5 And then at some point Don David stopped, told her to put the
6 clothes on. Don David took off the clothes -- or took off the tape, whereas she had
7 told Ms. Espinoza that she took the tape off herself. And then that day she went
8 and disclosed to her mom. That's not what anyone else says.

9 I grouped a lot of things together in the car, because there was a
10 lot of discussion with Yezline about Don David's car. She says that there was an
11 incident where Don David showed her his privates behind her car, and that
12 happened one time. This was along with Jatziri, Mirabel, Maradel. They don't ever
13 mention being -- Don David being behind a car when he shows his privates. They
14 do mention maybe they were on the side of the house, but they don't, you know,
15 support Yezline on that. She says that she never went to McDonald's or 99 Cents
16 store in Don David's house.

17 On direct, she testified she only went -- was in Don David's car
18 once. She sat in the backseat. Jatziri and the twins were there. Don David
19 touched her leg. She was asked, Are you sure he didn't touch you anywhere else?
20 Yes.

21 Then later after being reminded that maybe at a previous
22 testimony, maybe at a different time, she might have said something different, she
23 said, Okay, well, I guess there's another time in Don David's car where it was at
24 night and I sat in the backseat and Don David touched my *kosa* inside with Jatziri
25 and the twins there as well.

1 I don't know if I have to mention it at this point, but, of course,
2 Jatziri and the twins do not mention any sort of touching inside Don David's car.

3 Yezline testified about candy that he gave -- that Don David gave
4 to Jatziri, Maradel, and Mirabel. On the stand she said it was outside by the power
5 box. He put this candy around his private parts. And all the girls would reach into
6 his clothes to get the candy.

7 At the grand jury, she said something different. She said that it
8 would happen outside, in front of Don David's door, he would put candy in his front
9 pocket. And only Jatziri, Maradel and Mirabel would take it. Yezline never took it.

10 To Ms. Espinoza, of course, no mention whatsoever of candy in
11 private parts, at all.

12 On the stand, Yezline testified about seeing the phone -- Don
13 David's phone one time. This was outside the apartments. She was with Jatziri
14 and the twins. And on the stand she said -- she was the one who said she saw a
15 girl eating the thing of a guy on the phone. That was the first time a description of
16 that was made by any of the girls in the case.

17 To Ms. Espinoza, she said she saw the phone one time. But that
18 time -- but then it was inside the man's apartment, and she was sitting on the
19 couch, and Jatziri and the twins were there. And, obviously, Jatziri and the twins do
20 not describe a time when they saw the man's phone inside of -- when I say the
21 man, I'm sorry, Don David -- but when they saw Don David's phone inside of Don
22 David's house while sitting on a couch.

23 The Nicole incident. Yezline testified that she saw Don David
24 holding Nicole. Her body was not touching him. Nicole was quiet. At the grand
25 jury, Nicole's boobs and necks touched Don David. To Ms. Espinoza, doesn't say

1 anything about her sister at all.

2 Dr. Cetl was a pretty quick witness. Dr. Cetl said that there were
3 no findings on the SANE exam. And she did testify, you know, you wouldn't expect
4 to see findings in this. But findings, by that, of course, I mean any sort of definitive
5 proof of sexual assault. But there is a reason that we do these invasive exams of
6 children, because findings do exist. And we wouldn't do the exam for no reason.
7 Overall, nothing in Dr. Cetl's physical exam corroborates any of the girls' stories. It
8 doesn't uncorroborate it. It just is a wash.

9 Officer Tschirgi -- I never learned how to say that one, I'm sorry.
10 He was called to Mr. Azucena's workplace. Amanda, Maria, and Ricardo said that
11 Jose was inside there, Mr. Azucena was inside there. If Amanda -- Amanda would
12 know where Jose -- where Mr. Azucena worked, because she had worked with him
13 in the past. When they went there, they asked for David. But it was pretty clear
14 from the people at the front desk that he doesn't go by that name at work, and he
15 was in the back, working, at his work. Working. He gave his full name, which his
16 legal name is Jose Azucena.

17 He waited for 30 full minutes with Officer Tschirgi. The reason he
18 had to wait so long is because Officer Tschirgi said he was trying to get a hold of
19 Matt Campbell, trying to see if there was a warrant out for Mr. Azucena's arrest. At
20 that time, there was not. He was cooperative with Officer Tschirgi. Like I said, no
21 warrant.

22 Lieutenant Price and Janette Amador, basically, these people
23 testified in conjunction that Amanda, Maria, and their husbands have applied for U
24 visas. Amanda and Maria's petitions have been personally certified by Lieutenant
25 Price, meaning that he has signed off on it. And what we learned from Professor

1 Kagan later is that that actually does afford them some degree of protection once
2 that thing is signed.

3 Their husband applications are still pending, because they're
4 husbands haven't really, you know, offered -- talked to the police about this case.
5 I'm not sure why that is.

6 John Pacult then testified.

7 I'm skipping around. There's a couple witnesses I'm skipping to
8 save you guys. And also because they -- they don't add anything to the case.

9 He testified about grooming behavior, and turns out if you're nice
10 to a kid, you buy them presents, you buy them candy, you compliment them, and
11 try to learn things about them, you could be grooming them.

12 Now, of course, not everyone that gives kids a present intends to
13 molest them. There are valid reasons to be giving children presents or talking to
14 them. There's only grooming when there's sexual intent.

15 So in retrospect, when John Pacult looks at this case and he
16 knows these allegations have been made, that's why he can go back and say, there
17 is evidence of grooming behavior. Otherwise it's just a man who was nice to
18 children. And there's also this mean grooming that we talked about.

19 What I got from all this is what you want to do, what -- what
20 offenders want to do is get a child to like them, so the kid's going to go along with
21 their sexual behavior. And also so that the kid is going to keep your secret and not
22 report the abuse. Because it's very important to offenders that Mr. Pacult works
23 with that they not be reported, that they keep the secret.

24 Well, I guess Mr. Azucena was a failed groomer, because
25 according to several of the kids, they said they didn't even like Don David much

1 before this case happened. Also, there's no secrets here. There's nothing
2 secretive about the events that allegedly occurred all in -- mostly in public, in front
3 of multiple children.

4 So then there was a question that led to this line of questioning.
5 Mr. Pacult said that in his decades of work with sex offenders, he only remembers
6 two cases involving multiple children at a time -- at a time, in public places, in broad
7 daylight, like the things that he was -- he -- looking at here. So he said he worked
8 with -- he had maybe 5,000, 6,000, maybe more cases.

9 And David did some rough math there, and he said it
10 was .03 percent. David said maybe I'm wrong on the math. Well, he was. It was
11 actually two of 6,000 cases is .0003 percent. And this number we would expect to
12 be even lower, because Mr. Pacult was talking about the general public -- or sex
13 offenders, his work with sex offenders being with this. People that aren't even sex
14 offenders would be lower.

15 So just to give you an idea, this is what one percent of the
16 population looks like. I mean, the guy in red is -- is the one percent. This is
17 what .0003 percent of the population would look like. Not a very common thing.

18 Elizabeth Espinoza testified. She talked about forensic
19 interviews. And there's this specific format that she always -- that she follows. She
20 has specific protocols. There are nationwide standards that she adheres to. She
21 likes to open ask -- open -- ask open-ended questions and let kids give her
22 information. I don't think she would agree with the idea that kids only answer what
23 they're asked. Because her specific methodology is to let the kids volunteer
24 information.

25 She testified, you know, we're doing these forensic interviews.

1 And when I asked her, you want to avoid false positives, which means where a kid
2 says that abuse -- abuse occurred when it didn't, because, obviously, that's a very
3 negative thing. And she says, yeah, that's something that you want to avoid. You
4 also want to avoid false negatives where a kid doesn't disclose to you.

5 So it's important to adhere to these forensic interviewing
6 procedures. But, unfortunately, children are often interviewed by multiple people in
7 a nonforensic format before she even gets to them. In this case -- and those can
8 lead to these possible false positives. This can lead to possible false -- false
9 negatives.

10 There were previous interviews of all of the girls in this case, by
11 nonforensic examiners. Jatziri, Mirabel and Maradel were interviewed by Yusnay --
12 or talked to by Yusnay. They were talked to by Esther. They were talked to by
13 Amanda in the bathroom. They were talked to Amanda again at home and maybe,
14 depending on what account, maybe their dad. And then it seems pretty clear that
15 they talked to each other.

16 Yezline was interviewed by Yusnay -- or talked to Yusnay,
17 Esther, Amanda, and then she talked to her mom, Esther, again, in the night and
18 then she talked to her in the morning. Then she talked to the other girls.

19 All four of the girls used kind of the same terms. They used the
20 word *kosa* which means thing. But then there was also this term *kola*, which
21 Elizabeth Espinoza testified to really means butt. And she hadn't heard it used to
22 describe a vagina before, but most of the girls did do that. And then Scarlett, again,
23 was interviewed by Ricardo, her mother, possibly Amanda, possibly the other girls.

24 All right. Detective Campbell -- I like to refer to his -- the first part
25 of his testimony with this phrase, If you never look, you're never going to know.

1 Every day when I'm getting my kids ready for school, we're always missing one
2 shoe. My kids freak out. I can't find the shoe. I can't find the shoe. And I always
3 say, if you don't look, you're never going to find it.

4 Detective Campbell didn't look. He says that he did not process
5 the scene, because this was not an acute accusation. Not that he couldn't process
6 the scene. He just didn't, because he didn't think that he would find fingerprints.
7 He didn't think that he'd find DNA, and he didn't -- so he didn't do those things.

8 Do we know if he would have found anything? No. He never
9 tried. If he had, that could have -- I mean, that could have really possibly either
10 helped the State's case or helped our case.

11 He didn't do any of it. He didn't even send a CSA to take pictures
12 of the inside of these apartments where these things allegedly occurred so that we
13 could see if the layout actually corroborates what the girls described.

14 And he said, you know, even though he starred it in his notes and
15 he said he was going to go back and follow up on this, he never looked for tape.
16 And he actually said, I didn't know if I'd find anything. Well, you're never going to
17 know if you don't look. He didn't ask for any search warrants in this case. Not that
18 he couldn't. He didn't. He didn't search anything. He didn't talk to the kids himself.

19 He testified to that he, you know, saw some mention of Leo and
20 Litzi when the girls were being interviewed, and then later he was advised of them
21 on January 24th of 2017. And then later, he did, actually, himself, watch from
22 closed-caption TV the interview of Litzi, the interview of Leo on those dates. He
23 never filed any sort of supplemental report. Never wrote anything about their
24 statements, because, well, he says, they're not victims.

25 Well, they had actually seen the things that the girls said.

1 There -- they would have been two more victims. But he says that's why he didn't
2 trans -- that's why he didn't file a supplemental report, even though he had, you
3 know, filed one after the fact for Scarlett. Never wrote up anything that he heard
4 from Leo and Litzi. And he didn't even transcribe their interviews. We had to do
5 that. He turned over a disk. Maybe he didn't want anyone to know about Leo and
6 Litzi.

7 Detective Campbell, there was a lot of talk about multiple reports.
8 He has his folder notes. He has his personal notes. He has his supplemental
9 reports. He has his reports. There's a lot of things that didn't make it to the
10 supplemental report. For example, he did say, when he was listening to Mirabel,
11 that Yezline grabbed -- was grabbed last Friday, which would have been the 28th.

12 He says, you know, That time line didn't make any sense to me,
13 so I didn't write it. I had already told the moms to not let the kids around him, so I
14 knew the safety plan was in place. So didn't make sense in the investigation and
15 didn't include it.

16 So some things didn't make it in the final reports. And there's
17 some things that didn't make it in any of the reports, like his conversation with the
18 office manager about security cameras. Wouldn't it have been nice if we had some
19 security camera footage in this case?

20 Detective Campbell, he testified he was looking for Mr. Azucena.
21 And as we know, Amanda had occasionally worked with Mr. Azucena, she had told
22 Detective Campbell where he worked and where she -- he could find him.
23 Detective Campbell didn't go look. Henderson police were actually the ones who
24 found him. He was at his work. He was working.

25 Like I said, Amanda knew he worked there, because she had

1 worked with him. And she had told Detective Campbell where he worked. We
2 know he worked a lot. Amanda said she worked -- she didn't want to say a lot.
3 Esther said that there was a lot of times when he wasn't around, when Maria Elena
4 was invited over for dinner. Litzi said that he worked a lot. She was his next-door
5 neighborhood.

6 We also know that it wasn't unusual maybe for him to work long
7 hours. We have that burglary report. I know it was back in 2011, but there was a
8 time when he was sleeping over at his work to finish a job. So this is a man who
9 frequently does work long hours.

10 And there was absolutely no evidence from anyone on the stand
11 that would say that this -- that Mr. Azucena even knew that the children had made
12 these allegations. No evidence. No one said that they told Mr. Azucena. No one
13 said that they told Maria Elena. No evidence.

14 The State has not proved flight beyond a reasonable doubt.
15 There's an instruction that you're going to see in your packets that says that you
16 can consider if he fled from a crime. Well, he'd have to know that someone was
17 reporting him for a crime to do that.

18 And this is one of the many issues where you should review
19 Instruction No. 8. That is the Two Reasonable Interpretations instruction. And it's
20 so important I put it in my PowerPoint. And it says:

21 If the interpretation is susceptible to two reasonable
22 interpretations, one of which points to the defendant's guilt and the other of which
23 points to the defendant's innocence, it is your duty under the law to adopt the
24 interpretation which points to the defendant's innocence and reject that which
25 points to his guilt.

1 So let's, you know, talk about flight in reference to that. If you've
2 got some bare allegations that maybe they didn't -- they didn't see him around the
3 apartment after they made these allegations, but on the other hand, you have some
4 evidence that he worked a lot, frequently worked overnight, and might have just
5 been working, it is your duty to accept the one that points to his innocence, which is
6 that he was working.

7 Feel free to return to this instruction throughout your deliberations
8 when you have questions about how to interpret a particular piece of evidence.

9 Detective Campbell testified he interviewed Mr. Azucena. He
10 read him Miranda rights. You have the right to remain silent, the right to an
11 attorney, anything you say can and will be used against you in court. I've watched
12 a lot of *Law & Order*.

13 He doesn't have to talk. Mr. Azucena doesn't have to talk. But
14 he agreed to talk, despite the fact that he doesn't have to talk to Detective
15 Campbell.

16 And there was a lot of times when Detective Campbell talked
17 about Mr. Azucena being -- not volunteering details, being pretty reticent, not really
18 wanting to talk to him or not giving him information.

19 Maybe it was that he doesn't trust Detective Campbell, which
20 might have been right on the money, because in the middle of that interview,
21 Detective Campbell started lying to the defendant. Lying straight to his face. Well,
22 he called it a ruse. Whatever you want to call it, telling someone that it -- something
23 that is not true in order to get something that you want, that's a lie in my book.
24 Detective Campbell can call it a ruse.

25 But Detective Campbell justified it by saying something very

1 important: Well, I -- he did the ruse, because he's not going to confess if he didn't
2 do anything.

3 Couldn't have said it better myself. Mr. Azucena did not confess.

4 Litzi Paredes came in here and testified. She lives in that same
5 apartment complex as the girls, as Mr. Azucena. She lives next door to
6 Mr. Azucena. She's not close to him. He -- he's the man who lives next door. He
7 worked a lot. Sometimes gave her candy. Sometimes she didn't take it.

8 As you'll recall, Jatziri said that Litzi was present in the kitchen
9 when everyone was touched. Jatziri said that Litzi was present when David
10 showed her his part. Mirabel said that Litzi was present when Yezline was dragged
11 into David's house. Maradel says that Litzi was present when David touched her.

12 Litzi, for her part, testifies, she only went in David's house once
13 or twice, and that was with his wife. She never saw David's phone. She never saw
14 David -- David's part. She never saw David touch Jatziri, touch Mirabel, touch
15 Maradel, or touch Yezline. The girls said that David grabbed their hands. That's
16 what she heard.

17 Now, does Litzi have any motive to fabricate? Mr. Hamner talked
18 to her about how her mom had told her not to go in David's house. Okay. So -- so
19 maybe she said this to avoid getting in trouble? But here's the thing, most of those
20 events that the girls are saying Litzi was present for happened outside. She
21 wouldn't have gotten in trouble for saying that she witnessed those things.
22 Maradel's touching was outside. The exposure was outside. Yezline's alleged
23 dragging was outside. So she does not have a motive to fabricate.

24 Leo also testified, took the stand, talked about his love for
25 Chewbacca. He lives in that same apartment complex. He knows David, not well.

1 Took candy from him a couple times. Sometimes he didn't. Never got threatened
2 for not taking the candy.

3 He knows Jatziri. He knows Maradel, Mirabel, Yezline. As you'll
4 remember, Jatziri testified that Leo saw David's part, along with her. Mirabel says
5 that Leo saw David touch her thing with his thing. Leo saw David's part, along with
6 Mirabel, and that Leo also saw things on David's phone.

7 Leo, for his part, said, Yeah, David gave me candy. I didn't
8 always take it. I never saw anything on David's phone. I never saw David's part. I
9 never saw David touch Jatziri, Mirabel, Maradel, or Yezline.

10 What's his motive to fabricate? I can't even think of any.

11 Professor Kagan testified. He is a professor of law at the
12 University of Las Vegas, Nevada -- University of Nevada, Las Vegas. He works
13 with low income people every day. He's doing deportation defense. He's a big fan
14 of the U visa law. But even he admits that as it's written, as congress passed it,
15 there is this possibility for abuse.

16 He testified a little bit differently from the State's witnesses, who
17 didn't quite have his experience in immigration law. He said that there was no -- no
18 other path to legal status for Amanda or Maria or someone like, you know, Ricardo
19 whose visa had expired.

20 He also testified that once you have that certified application,
21 meaning that Officer -- Lieutenant Price signs off on it, you do have protection,
22 because if you are -- if they are deported tomorrow, their application doesn't stop.
23 Their application remains in the queue. And if the -- and when the application
24 gets -- gets approved down the road, they could come back and they can get that
25 U visa.

1 So there is some certain protections, as soon as that thing is
2 signed. And then in two -- in nine months to two years, they're going to get this
3 promise from the U.S. government that they are will not deport them. And then
4 they will also get a work card so that they can legally be employed in the United
5 States. So while they're still waiting for their U visas, they get all of these
6 protections. That's not what the State's witness said.

7 And he did say approval for U visa can be withdrawn if no
8 cooperation. I mean, the -- it's up -- it's incumbent on Metro or -- or the certifying
9 agency to withdraw that approval, but it's possible. He did say they're going to
10 have to wait up to four years for that U visa. But while they're waiting for the U visa
11 and they have been certified as having a prima facie case, they have the exact
12 same protection as under that U visa. They can renew that U visa. They can apply
13 to be a law -- legal permanent resident, which is the highest level of status below
14 being a citizen.

15 And then, neither here nor there, he testified about Cubans
16 having a much easier path than others before the first of this year, which applies to,
17 perhaps, our Cuban in this case.

18 When I started, I talked about the things that you need to judge a
19 case -- to judge the entirety of all the stories here. First, you look to consistency.
20 There is no consistency in this case. We have memories that seem to get better
21 with the passage of time. They brighten, not fade. Yusnay's story gets better. She
22 adds details. The parents' stories get better. They add details.

23 The truth never changes, though. Well, the girls' stories changed
24 from the voluntary statement, then they give it -- then there were different stories at
25 the grand jury, and there were different stories on -- at trial. Often, when you would

1 see them testifying on direct for the State, they would say different things than they
2 then said on cross. And sometimes even within the State's direct, they would be
3 changing their stories.

4 The girls' stories in no way, do not -- do -- in no way support each
5 others' accounts. Sure, they all describe the basic things, the basic talking points
6 they were given -- candy, phone, exposure, touchings; the details are contradictory,
7 they're all over the place. And no one ever described the same thing at the same
8 time. There's no corroboration. No one provides any sort of timeline whatsoever.

9 But we do hear that Mr. Azucena worked a lot. His wife was
10 often home alone. Obviously, we can't produce any sort of work records or
11 anything like that, because no one tells us when any of this is happening. And
12 some of them even say it happened in the day. No, it happened at night. So we
13 can get no timeline established here.

14 No physical evidence. We talked about that with Detective
15 Campbell. Security footage, DNA, fingerprints, tape, pictures of inside the
16 apartment. I mean, if the State has -- if -- if Detective Campbell goes into Don
17 David's apartment and find Yezline's -- and finds Yezline's DNA on that bedspread,
18 it's over. Our story -- the discrepancies don't matter so much anymore. But he
19 didn't do any of this, so we don't have any of it.

20 And this is proof beyond a reasonable doubt? No.

21 The girls' stories, as I've talked about ad nauseam don't even --
22 don't corroborate each other. They -- their words do not provide any proof beyond
23 a reasonable doubt.

24 Litzi testifies. She doesn't corroborate any of the details of the
25 stories, any of the things that she was supposed to be present there for, she says

1 no. In fact, she contradicts them.

2 Leo doesn't corroborate any of the details of the story. In fact, he
3 contradicts them.

4 And we have no confession here.

5 There's no credibility. People lie to get what they want. I don't
6 know what everyone wants in this case. We are not here to establish some sort of
7 big conspiracy theory where everyone sat down and signed rules. We can't do
8 that. It's proving a negative -- or it's -- sorry -- establishing his -- establishing
9 innocence is proving a negative. And we're obviously not going to be party to any
10 sort of conspiracy, you know, conversations.

11 Any -- I -- I don't know why the girls might have made this up. It's
12 just pretty clear from their accounts none of this holds together. None of this is
13 proof beyond a reasonable doubt. I mean -- I mean, we know that the girls ran
14 around that apartment complex. Jatziri is the leader. Yezline -- Jatziri wanted to
15 play with her, but sometimes even before these incidents, maybe Yezline didn't
16 want to play with Jatziri and the twins. And the twins -- the twins are kind of the
17 followers. Scarlett isn't there on the weekends, so she kind of wants to be in with
18 the cool kids. I -- I don't know. But they did get attention from their parents, they
19 did get attention from their peers.

20 I'm not here trying to prove anything. I'm trying to say that all
21 these things create reasonable doubts in the State's case.

22 And their parents get to stay in this country. They get to get a
23 U visa. They get to watch their children grow up here instead of in another country
24 where they don't want to be.

25 Well, the idea that these kids don't lie, didn't lie, we know we

1 have Scarlett is one of the -- the alleged victims in this case, we know that she lied
2 to a CPS worker investigating a crime, and we know she was put up to it by her
3 parents. So the idea that kids don't lie at the behest of their parents -- we know
4 that's not true.

5 We know Jatziri said that she listens to her mom so she didn't get
6 in trouble.

7 The twins believe what their mom tells them is the truth, and they
8 said that they're scared of their mom hitting them.

9 We know that Yezline believes what her mom and what Amanda
10 say is the truth.

11 So what the adults say is true.

12 I want to talk to you a little bit about compromises before I sit
13 down. I swear I'm almost done.

14 You've got 39 charges on that verdict sheet. It is long. It is a
15 bear to get through. Remember when you are going through these charges, the
16 State has the burden. The State always has the burden. They have to prove every
17 element of every single charge on that case -- in this case.

18 It's not a popularity contest. It's not, you know, I think the State
19 did a good job. I'm going to give them one or two here. No. No. This is a
20 no-compromise situation. Mr. Azucena pled not guilty to every single count. And
21 by pleading not guilty, he told you loud and clear he didn't do any of this. It's the
22 most important decision of his life, and like I said, this is a no-compromise position.

23 Let's say that you are at your favorite Italian restaurant and
24 you're getting ready to tuck into a bowl of spaghetti and meatballs. And it smells so
25 good. I'm so hungry. And then you see a leg sticking out. And move the meatball

1 a little bit. There's a cockroach in your spaghetti. What do you do? You eat
2 around it? You pick parts that you like and you say some of this is -- is still good?
3 No. You throw the entire bowl out.

4 And that's kind of what this credibility instruction that you're going
5 to get says. I'm not going to read it all, because, frankly, I'm losing my voice and
6 you're going to have it in that packet that -- that you were provided.

7 The important part is that if you believe a witness has lied about
8 any material fact in the case, you can disregard their entire testimony of that
9 witness. Throw the entire bad story out.

10 There's only one reasonable verdict after everything that you've
11 heard these last two weeks. Mr. Azucena was cloaked in that presumption of
12 innocence that makes our justice system so great, until and unless the State
13 presented proof beyond a reasonable doubt for every single element of every single
14 charge.

15 State failed to meet their burden for every single charge. You
16 have to find Mr. Azucena not guilty of all of these charges.

17 Thank you, so much.

18 THE COURT: Thank you, Ms. Kierny.

19 Anybody need a -- a break to use the restroom? If not, we're --
20 the State gets the last word. I don't know how long Mr. Hamner is going to take.
21 Raise your hand if you need an emergency break, use the bathroom, or take a few
22 minutes. If not -- well, if you -- we'll see how long he goes. If you need a break,
23 raise your hand if the need arises. All right.

24 Mr. Hamner, you have the floor.

25 MR. HAMNER: Thank you, very much.

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1 Counsel just said you have to find him not guilty. Respectfully,
2 State's going to disagree with that.

3 As we told you at the beginning of this case, this is a case about
4 treats, trust, and fear. We said it at the very open. And as you've listened to every
5 single witness, that's what this case is about.

6 It's about a man who for nearly a decade earned the trust of
7 families that lived with him. He partied with them, he hung out with them. He knew
8 these kids, some of them from the moment they were born. He created enough of
9 a world of trust that some of these mothers literally allowed them to go inside the
10 house, and they thought everything was fine, because he did nice things for them.
11 Gifts on their birthday. Taking them to places like McDonald's. Handing out candy.
12 Things along that nature. But at the end of the day, he was doing it for a much
13 more sinister purpose.

14 And he also brought those kids in with the treats, the candy, the
15 positive grooming, as we've heard about. All so he could take advantage of them,
16 to molest them.

17 And the way he kept their silence for a while was using fear. And
18 we talk all -- you've been hearing so much about inconsistencies and not credibility.
19 Ladies and gentlemen --

20 MR. WESTBROOK: Objection, Your Honor. Disparaging tone. It's
21 important that there are inconsistencies.

22 THE COURT: Overruled.

23 MR. HAMNER: Like I said, you've been hearing all this talk about
24 inconsistencies. I hope you guys check your notes. Were these children
25 inconsistent about the threats? Were these children inconsistent about having their

1 vaginas touched? Were these children inconsistent when they talked to you about
2 what he would do with chocolate on his genitalia? Was it? You have the notes.
3 You all sat here and listened. And the answer is no, because that's what this case
4 is. That is what this man did to these six children.

5 Let's talk about a couple quick instructions, direct versus
6 circumstantial evidence. Now, sometimes in the courts we use a story to teach you
7 the difference between the two.

8 Example No. 1, let's say you're trying to go home to -- from work
9 and you see clouds outside. You're hearing on the radio that the rain's going to
10 come. You get in your car. You hear the thunder rumbling. You're driving and as
11 you get to your house, you start seeing rain dropping onto your windshield and
12 going all over the -- the street as you're running to your house. Okay.

13 If you were called as a witness, you could testify and, say,
14 present direct evidence, because that's a person who claims to have personal
15 knowledge of something they saw, because you saw the rain, right?

16 Well, what's circumstantial evidence? Because you've heard that
17 term bandied about. Here's a little twist on that same story.

18 You're getting ready to come home from work. You see the
19 clouds in the sky, but you don't see the rain. You come outside. You feel the
20 humidity in the air, but you don't see the rain. You're driving in the car, storm's
21 coming, but you don't see the rain. You pull up to your house. You see the storm
22 clouds kind of rolling in, but you don't see the rain. You go inside your house. You
23 come out about an hour later, and when you come out, the heavens have opened
24 up. All the cement is -- is dark as if water's been soaked up. You see a trickle of
25 water going down the gutter. You look at your car, it's got beads of water all over it.

1 Ladies and gentlemen, circumstantial evidence is the proof of a
2 chain of facts and circumstances that tend to show something happened. Right?
3 In this scenario, you could connect the dots; the humidity outside, the clouds, the
4 rain -- the radio program, the water in the gutter, the wet on the ground, the dots on
5 your car, to make a conclusion, I could connect all those together and I could
6 conclude that it rained when I was inside. You didn't see it, but the
7 circumstances -- the circumstantial evidence can lead you to that conclusion.

8 And here is the important thing -- the law, it doesn't make a
9 distinction between the weight to be given. That's up to you. One is not
10 necessarily better than the other. And there's a ton of direct evidence in this case,
11 because every one of those children that tell you about their personal experience
12 with that man, that's direct evidence. And then you've got a whole bunch of other
13 circumstances that you can connect together to see if it actually corroborates what
14 these children were saying.

15 Instruction No. 8, counsel got up here -- this is the one where
16 you -- if you -- if the evidence is susceptible to two reasonable interpretations, and
17 one points to the defendant's guilt and the other of which points to the defendant's
18 innocence, it's your duty to adopt that interpretation which points to Defendant's
19 innocence and reject that which points to his guilt.

20 They -- they talk about that. There's two reasonable
21 interpretations. And -- and the argument was that -- it goes on to talk about
22 circumstantial evidence. Before you may rely on circumstantial evidence to
23 conclude a fact is necessary to find the defendant guilty as proved, you must be
24 convinced beyond -- you must be convinced the State has proved each fact
25 essential to that conclusion beyond a reasonable doubt.

1 And what it's talking about is what you do with a lot of
2 circumstantial evidence. But make no mistake, ladies and gentlemen, every child
3 that said, I remember him touching me, that's not circumstantial. It's direct
4 evidence. They saw it with their own two eyes. They felt it on their bodies.
5 Remember that.

6 Because it shouldn't be applied to every single scenario. It needs
7 to be applied to circumstantial evidence, if the circumstantial evidence is even
8 close.

9 Common sense. This one's critical. Okay. Because you don't
10 leave your common sense at the door. Because when you really look at this case,
11 when you think about all those kids and what they've told you happened to them,
12 your common sense is screaming at you that he's absolutely guilty of every single
13 count.

14 This case, with all due respect, based on the evidence, it's not
15 close, based on the evidence you have. Based on the testimony of these children,
16 it is not close.

17 Reasonable doubt. This is the instruction on reasonable doubt.
18 And a key thing that you need to remember is, look, it needs to be based on
19 reason. But remember, doubt to be reasonable, must be actual, not mere
20 possibility or speculation. And that's critical, folks, because you don't get
21 reasonable doubt by speculating. The law expressly says you cannot do that. You
22 cannot speculate. And that becomes really important when you start looking at
23 what defenses the defenses have raised in this case. Because they're not
24 connected by evidence. They're speculation.

25 And I will touch on that when we go through some of these

1 arguments.

2 And remember, ladies and gentlemen, the statements of counsel
3 are not evidence. There's a whole instruction on that.

4 So, for example, in closing there was a lot of facts that were
5 being brought up saying these are not reasonable doubts. Do you remember
6 seeing those slides? These are not reasonable doubts.

7 Litzi being in the kitchen when she said she wasn't inside. And
8 so this is -- this is reasonable doubt. No, it's not.

9 Mirabel reporting the tape day. Not reasonable doubt. The color
10 of the tape -- remember different people say it was gray versus white. The physical
11 impossibility of being taped and having your clothes removed. Whether things
12 happened by a power box or the door, right? And there were all these slides saying
13 these are reasonable doubts.

14 Ladies and gentlemen, these are small inconsistencies with
15 testimony. Okay. Just because -- and -- and I -- I'd refer to your notes.

16 I'll give you an example of the power box and by the door.
17 Multiple children said things happened by the door. You've got your notes that
18 reflect that.

19 We had the children look at those pictures and say, hey, where
20 did these things happen? And many of them circled by the power box. So one
21 kid's off and now we've already jumped to reasonable doubt? With all due respect,
22 that's not what the evidence says. And that's -- that's a huge leap. That's
23 absolutely speculative. When you think about everything else they had to say.

24 A pink versus a black phone. How did -- how does the pink
25 versus the black phone change the fact that there was porn on it? Think about that.

1 Is that reasonable? Well, you didn't get the color of the phone right.

2 MR. WESTBROOK: Your Honor, objection. Disparaging again.

3 MR. HAMNER: It -- it's not disparaging.

4 THE COURT: Overruled.

5 MR. HAMNER: Maybe the kids were a little too concentrated on the
6 man eating the woman's thing or the woman eating the man's thing. Maybe they
7 were too focused on that.

8 Inside versus outside. No dogs mentioned during a kidnapping?
9 That was one of the arguments. Is that truly reasonable doubt? With all due
10 respect, no. Because when you think about what these children said, the conduct
11 that was said, and how they described it, this absolutely is not reasonable doubt.

12 Possibly other kids, other than the main four girls present when
13 certain conduct happened, or there was the comment about she was kissed on the
14 mouth and the quote was, Well, was that over the tape?

15 Well, with all due respect, with respect to that, does it matter?
16 Because the State would submit he liked it, whether that tape was on her lips or
17 not, he enjoyed kissing her as she was all tied up and touched her. Because that's
18 what did it for him.

19 Amanda and Maria applying for a U visa; is this really reasonable
20 doubt? The answer is no. Is it a possible motivation, I guess, to maybe get their
21 children to make up a story? I guess. But we'll get into that.

22 And Litzi and Leo's testimony, definitely not. We will touch on
23 that in more details.

24 And then -- but the best lies have some shred of truth. And I
25 wanted to touch on one of the things that talked about -- read about. Mr. Azucena

1 did give these candy -- did give these kids candy. Please store that quote away,
2 because it becomes important later on.

3 Counsel stated and -- and acknowledged that that's absolutely
4 what he did. And also this quote about the truth doesn't change. Also important.
5 We're going to touch on it later.

6 Now, they said the State -- the system demands that we prove
7 each and every element, and we didn't even come close.

8 And I've already kind of touched on this. I think we've
9 absolutely -- we've met our burden based on the evidence. And -- and with all due
10 respect, we meet this burden every single day. And -- and prosecutors do it in
11 courts across the country. It's the highest burden in the land, but we do it all the
12 time. And we did it in this case.

13 Let's talk about their big arguments. This is a case based on
14 words alone, right, that's -- that's the big overarching theme. It's just words.

15 What's the significance of this argument? The idea is that
16 there's -- if there's not more evidence than just words, then maybe it just didn't
17 happen. Right? That's the thrust of that argument.

18 MR. WESTBROOK: Objection. Misstates the argument.

19 THE COURT: Overruled.

20 MR. HAMNER: Is it really just words? No.

21 First, let's talk about the law. What's the law say? Because
22 you've all made a commitment to follow the law. The law actually -- wait for it --
23 allows you to believe the sole words of an alleged victim, if you believe it beyond a
24 reasonable doubt. So if they got up here and tell you it's just words, but you believe
25 those words, guess what? You're entitled to find someone guilty, because of the

1 nature of these particular cases, because these are crimes that happen in secret.
2 There aren't going to be video cameras watching men touching little children
3 around. That's not going to happen. And that's why the law says that you, as this
4 jury, in this case, are entitled to believe those words.

5 And this is the language. There is no requirement that the
6 testimony of a victim of a sexual assault or lewdness be corroborated. Not even
7 corroborated. You don't even need the words of another person to corroborate it.
8 Just that victim standing alone. That child sitting there, standing on the stand, if
9 you believe her, one of them or all of them, it's over. If you believe it beyond a
10 reasonable doubt.

11 But you have corroboration. Where? Number one, let's talk
12 about the children. Think about what these children told you. They told you that
13 these other girls were there when these things are happening. So you actually
14 have, while we've talked about this idea that these things typically happen in secret,
15 this defendant is so brazen with his treats and his threats, he had enough
16 confidence to do it with a couple of them that he had within his grasp. Because the
17 threat of their parents dying was so much that he could do what he wanted. Come
18 on in. Get some candy. Now I'm going to touch it. If you tell anybody, I'm going to
19 kill your parents. And he kept them at bay.

20 But make no mistake, ladies and gentlemen, these other children
21 corroborate each other. How many of these children deviated from the fact that
22 they saw -- well, let's take the main four girls. The Moreno girls and Yezline.
23 Which one of them said they didn't see the other ones touched on the vagina at
24 some point? Which one did that? The answer is none. Check your notes.

25 So you have one victim saying I got touched on my vagina, and

1 you have three other eyewitnesss that say yes, I saw that, too. That's
2 corroboration. That's evidence.

3 But it's not just that. Remember the photos that we threw up?
4 Hey, where did some of these things happen? Remember where they were
5 circling? Were they circling a lot of the same places? Absolutely. What did they
6 unwittingly just do? They corroborated it. They circled same locations that the
7 other ones testified to. And they weren't in the room to watch them circle. They did
8 that on their own. That's corroboration. It's not just words.

9 Leo and Litzi, boy, I'll be honest. I mean, you're right. Leo and
10 Litzi didn't see any sort of physical -- any sort of touching happen, but they sure did
11 see a lot of stuff. What did they say -- I'll give you -- I'll give you a great example.
12 And it ties back to the defendant.

13 What did the defendant say in his interview about inviting boys
14 and girls and offering them candy at his house? Remember what he said? Well,
15 let me tell you what he said. Absolutely not. I never did that. I never did it. I don't
16 know why those girls would say that about me. Those are his words. Test the
17 words, remember that? Test his words. Never did it.

18 But what did Leo and Litzi say? His own witnesses, oh, Don
19 David, oh, yeah, he -- he would give us candy. He offered me candy. Yeah, I took
20 some candy sometimes. That was Leo.

21 What did Litzi tell you, Oh, yeah, he offered me. And I became
22 scared, because it was the first time he'd offered me candy. Who did you normally
23 see, Litzi? Oh, the girls. The alleged victims in this case. I saw him primarily
24 offering them candy. And when he turned to me, I got scared and had told him no.

25 But remember, the --

1 MR. WESTBROOK: Objection. That misstates her testimony.

2 THE COURT: The part about Litzzi?

3 MR. WESTBROOK: His characterization of her saying that she got
4 scared because he offered her candy.

5 THE COURT: I don't remember her saying on the stand that she was
6 scared.

7 MR. HAMNER: I -- she said it scared her because it was the first time
8 he had done it to her, because he had seen her offer it to the other girls and not
9 her.

10 THE COURT: Well, okay. I'm going to have to -- that -- that one I
11 couldn't recall, so I'm just going to have to let the jury try to -- try to remember on
12 their own.

13 MR. HAMNER: Please --

14 THE COURT: All right. Go ahead.

15 MR. HAMNER: -- by all means, check your notes on that one, because
16 that's what she said on cross. It scared her. And we asked her why it scared her.
17 And she said, It's because he finally started asking me.

18 So Leo and Litzzi, the defense's own witnesses corroborate.

19 What did these two also say? Who did you see go into the
20 house? The girls. Remember?

21 And -- but remember in closing, they're criticizing the girls, well,
22 sometimes they said it happened outside the house. Sometimes they said it
23 happened inside the house. They're so inconsistent.

24 Well, they called two witnesses to the stand who admitted that
25 they saw these girls go inside the house. One of them, you heard the door was

1 locked in some situations. Did we have a child indicate that when she was
2 touched, a door was locked? Did we hear that testimony from one of the victims?

3 MS. KIERNY: I'm going to object. We weren't even able to -- we
4 weren't allowed to ask about the locking.

5 MR. HAMNER: I didn't say who locked it.

6 MS. KIERNY: That was stricken.

7 MR. WESTBROOK: It was stricken from the record.

8 MR. HAMNER: Just that the door was.

9 MR. WESTBROOK: It was stricken from the record, Your Honor.

10 MR. HAMNER: That's not accurate.

11 THE COURT: What was stricken is -- is not whether the door was
12 locked, but whether one of the children saw how it -- how the door was shut and
13 locked. And -- and I remember that. So overruled.

14 Go ahead.

15 MR. HAMNER: So as I was saying, they even corroborated the door
16 would be locked sometimes when these girls went in there.

17 What did the defendant say about that very topic? I never let
18 those girls go in alone. Never. Didn't do it. Only if they had an adult with them.
19 Not me. Test his words against his own witnesses. Because they don't
20 corroborate him. They corroborate these children.

21 Then we talk about Yusnay and the parents. You -- you can --
22 you can --

23 Oh, and by the way, what did Leo tell you the candy of choice
24 was? KitKats. How many times did you hear these girls talk about KitKats? All
25 day. All day.

1 Yusnay and the parents. You -- when you listened to the children
2 tell their story, you also got to hear Yusnay and these parents relay how their
3 children told them. You have your notes. Do the things that they say, are they
4 corroborative? Do they match up in kind of order and actions and things that
5 happen for when these children told you? The State would submit, absolutely.

6 And let's just talk about the DNA and the fingerprint testing,
7 because I know that was a -- a big point.

8 Ladies and gentlemen, here's the thing, the detective explained
9 to you why. Here's the problem with DNA and fingerprints. What does it go to? It
10 goes to identity, right? That's what it proves. They tell you when someone leaves
11 their fingerprints. It tells you who leaves their DNA behind. But this is not a
12 whodunit case. But that's not the bigger issue.

13 The bigger problem with DNA and fingerprints and the purpose of
14 this case, when you have a delayed disclosure, is the one thing that DNA and
15 fingerprints can't tell you is when it was left. What's the point of testing some room
16 months later after something may have happened? What is the point? Because --
17 because the -- what do you think the argument's going to be? Well, you don't know
18 when that was done. So that's it. That's the reason why it wasn't done.

19 But we also have actions. First, look at the children's choice of
20 who they told. Those are actions. They didn't choose their parents. They chose
21 the neighbor who is not -- they're not even close with --

22 THE COURT: Mr. Hamner, I think we need a battery change.

23 MR. HAMNER: Okay.

24 [Pause in proceedings.]

25 THE COURT: Do the jurors want to just keep going so we can finish?

1 Or do you want to take a -- do you need to take a break, anybody? Keep going?

2 UNIDENTIFIED JUROR: How long is it going to take?

3 THE COURT: I have no idea.

4 Mr. Hamner, what have you got?

5 MR. HAMNER: I probably have another 20 minutes.

6 THE COURT: 15 -- 20 minutes?

7 MR. HAMNER: Yeah.

8 THE COURT: So 20 minutes, what do you guys think? Anybody want
9 to finish or go take a break?

10 UNIDENTIFIED JUROR: Keep going.

11 THE COURT: Keep going? Okay. All right.

12 [Pause in proceedings.]

13 THE COURT: So let's continue.

14 MR. HAMNER: Thank you very much.

15 So that's an important action. That's not just words, because it
16 tells us something. It tells us what was going on in the minds of those kids. And
17 they explained it to you. What did they tell you? We went to her because he never
18 said he was going to kill her. An interesting action that you can use as part of your
19 factor when you're thinking about this. They did everything they could to share
20 what was happening to them without exposing their parent to any physical harm.
21 It's an interesting move by the kids.

22 Then think about the defendant's behavior about the apartment.
23 Think about all the corroborative things you're hearing from Leo and Litzi and what
24 he's doing and if it's really matching up with what you're seeing here.

25 Think about what the parents thought was innocuous behavior.

1 Remember that? That sort of information is important. Offering to take them
2 places, giving them candy, which we learned from Pacult is an example of
3 grooming -- good grooming, right?

4 All those are actions. Actions that you get to consider for your
5 verdict.

6 Then his flight after the disclosure. He took off. He bounced
7 from that apartment complex -- an apartment complex that we know he had been
8 with there at least eight years, because that's as long as Amanda's been there.
9 And they believe that he was living there even much longer with his wife. Why
10 leave?

11 And remember -- remember that the situation in the disclosure,
12 what's happening? People were at Maria's house. Elena is at Maria's house. Kids
13 are freaking out after talking to who? Him. And breakdown.

14 He thought he was going to Chuck E. Cheese, that day.
15 Remember? He thought it was all straight. And it wasn't. Because those kids
16 were so freaked out at that point, they were, like, forget this, I'm telling Mom. This
17 is what's happening.

18 And surprise, surprise, who is not hanging out at the Charleston
19 Gardens Apartments anymore? Him. And that was on October 17th.

20 MR. WESTBROOK: Objection. Facts not in evidence.

21 MR. HAMNER: Based on the evidence that I heard.

22 THE COURT: Well, I'll let the jury decide if they can draw their
23 reasonable --

24 MR. WESTBROOK: And I move to strike, because I think he's basing
25 this on something that was offered not for the truth of the matter asserted. It's just

1 improper argument, as well.

2 MR. HAMNER: It's a fair comment on the evidence.

3 THE COURT: I -- I will overrule. And we'll wrap this up --

4 MR. HAMNER: Thank you.

5 THE COURT: -- and then see where it goes.

6 MR. HAMNER: And -- and what happens on November 12th? He --
7 he's in Henderson. He's not in Las Vegas.

8 And think about his strange responses. We're talking about in his
9 interviews. Oh, my name is -- I've never told anyone my name is David. I never
10 invited those kids in ever alone. I never gave them candy. I never tell my wife
11 anything about my whereabouts. And it's been a month?

12 Think about those things. Because you get to piece all of those
13 pieces together and connect the dots. Because what does it tell us? It shows
14 what's in his mind at that point in time.

15 Then there's this big talk, undocumented parents and U visas.
16 What was that? The idea is what? It's all made up so they can get legal status.

17 MR. WESTBROOK: Objection. Misstates the argument.

18 THE COURT: Overruled.

19 MR. HAMNER: So let's figure this out. Are they really that desperate?
20 What do we hear? Amanda's been living here nearly -- illegally for nearly a
21 decade, right? She's known him for eight years. And -- and as we heard from --
22 from professor -- the professor, oh, gosh, illegals, they live in fear all the time. And
23 it's --

24 MR. WESTBROOK: Objection. He's disparaging a witness now.

25 MR. HAMNER: I'm -- I'm not disparaging a witness.

1 MR. WESTBROOK: That's the most sarcastic disparaging comment
2 that I've heard yet.

3 THE COURT: Well, I will overrule.

4 MR. HAMNER: The professor says that you that the illegal community
5 has constantly been living in fear, right? That's the whole thing he was pushing,
6 right? So there's this big incentive to get the U visa.

7 Here's the problem with that argument. She's been here for eight
8 years. She's been here for eight years and she doesn't dime him out once. Why?
9 If she's so desperate for the U visa, why not do it? And -- and think of the timing,
10 ladies and gentlemen. It's October. The election hasn't even happened yet. We're
11 not under a new administration, right? We're on the Obama Administration. So
12 why?

13 Same story for Maria. She's known him for years. If -- if she's an
14 undocumented person and is under such fear, it's not like they haven't had kids.
15 They've had kids for years and years and years. So why? Why do this now? Why
16 not do it earlier? It doesn't make sense.

17 And it doesn't make sense, because, ladies and gentlemen, the
18 evidence has shown, that was never their motivation for going to the police.

19 Ricardo doesn't even apply. He didn't apply. So how does this
20 argument even apply to him? Why does he jump on it? Yeah, I want to put my
21 daughter through all this craziness. I'm not ultimately applying for a U visa, but
22 we're going to go through this whole process.

23 MR. WESTBROOK: Objection. Misstates the testimony. He didn't say
24 he was not applying for a U visa.

25 THE COURT: Isn't he the one who hired counsel?

1 MR. HAMNER: He did not apply. As he testified --

2 THE COURT: There's no evidence yet of an application. So --

3 MS. KIERNY: The State hasn't given it to --

4 THE COURT: So, I mean, technically, there's no evidence yet of an
5 application.

6 MR. WESTBROOK: And -- and that would be burden shifting.

7 MR. HAMNER: It's not burden shifting.

8 THE COURT: Overruled. Let's continue.

9 MR. HAMNER: Okay. And -- and remember this, think about all the
10 people who interacted with him at the beginning. None of these people, these --
11 these first responding officers, none of them talked about these parents wanting
12 U visas. Think about it when you're thinking about how credible this argument is.

13 And why him? Why not a stranger? Why not just say, look,
14 some random person at the park touched my kid? Why so many families? Why do
15 you rope in three separate families to falsely accuse one person? Why so many
16 kids? Do you really need that many kids to get this U visa? Because, I mean, you
17 heard about the process, right? You just need a police report and some voluntary
18 statement about how you're victimized. Why not concoct a story about a
19 voluntary -- a stranger, one parent, a stranger touched my kid at a park. He
20 was 6-foot-4 and he was wearing this, he had this color hair, da, da, da, da, da.
21 Why not do it that way? Why go after the family friend? The person that they've
22 been doing everything together for nearly a decade. Why? If it's all for illegitimate
23 purpose? That makes no sense. It defies common sense.

24 Why drag in Yusnay? The neighbor that has -- she just -- she's
25 not even connected to any of these people. Does that make sense? No. The

1 reason why she got brought in is because the children realized this is the person
2 we can talk to about it and won't get killed. It wasn't because of some conspiracy.

3 And remember these quotes from Maria, I'd rather have justice
4 for them than the papers. I'd cancel them, if it means I could get justice. Think
5 about that. Think about those parents when you're evaluating it, when they talked
6 about their children. When you're evaluating if this was all about some sort of
7 immigration thing for them. You get to make that call.

8 And there's no evidence of the children being forced to lie for a
9 U visa. It's not there. That is speculation. That is a huge leap by the defense. It's
10 huge. Because there's nothing in it.

11 MR. WESTBROOK: Objection. Burden shifting and misstates the
12 evidence. And disparaging. It's three. The three-fer.

13 THE COURT: You know what, I -- I respect your right to -- to object for
14 the record, but I respectfully overrule.

15 Go ahead.

16 MR. HAMNER: Like I said, that's just -- it's speculative based on the
17 evidence that you have. These children never said they were told to lie. Ever.
18 Ever.

19 Then there's the argument, oh, every detail doesn't match up.
20 And so what's the significance? Right? If all five kids can't tell an identical version,
21 well, then, it must not be true. Right? That's the thrust of this argument.

22 Well, think about the opposite. What if every five -- of these five
23 children came in and told the exact same story? Like a robot. Same order, same
24 facts, same details, same wording, every single time. What's the argument then?
25 It's a conspiracy, right? They all got put up -- why aren't there any differences in

1 what they have to say? It's a lose/lose. Right?

2 But think about these photos when you're evaluating things.
3 And -- and as Ms. Kollins mentioned, evaluate them for what their ages are. These
4 are eight-year-olds and nine-year-olds. And -- and when it comes to the big picture,
5 the phone, the stuff from Maradel who even acknowledged, yeah, I think my sister
6 showed me whatever. And we're not asking on that count.

7 But all the other kids about the phones and the chocolate and
8 touching their vaginas and just being threatened. Are they all telling generally the
9 same story? Are they -- are they omitting these things? The answer is no. They're
10 not.

11 And -- and we got into all these little details -- the pink phone, the
12 black phone. But ladies and gentlemen, don't miss the forest for the trees. Don't
13 do it. That's where they want you to go, but don't do it. Because the evidence,
14 when you listen to their stories, it's very clear what was happening in that
15 apartment.

16 The other witnesses, Yusnay -- I mean, I -- you know, they were
17 talking about the kids, that the kids didn't really believe the threats. That's your call.
18 Do you really think these kids didn't seem scared or worried about what was
19 happening with the defendant when he said he would harm them? That's your call.
20 I'm not going to go through every little thing.

21 You know, what's her motive to make this up? Why is Yusnay
22 motivated to join these people that she's not friends with? Maybe if she's some
23 longstanding family friend, that idea might work. But what's the point -- what's her
24 axe to grind? There's nothing. You've never heard of any sort of bias that she has
25 against the defendant. These are just kids that showed up.

1 And about the details, she said repeatedly, look, when I got and
2 talked to those cops the first time, it was very nervous -- nerve-wracking for me. I'd
3 never done anything like this before. I'd never heard anything. And she said, Look,
4 I'm sorry if I omitted something.

5 You remember -- think about how she responded to being called
6 out for, well, you didn't say this versus that time. Think about that. And think about
7 whether that's someone who is trying to lie for a conspiracy, or if it's something
8 more along the lines of, look, I was kind of frazzled when the whole thing
9 happened. I tried my best in that moment. Think about it.

10 You know, the immigration status is different. But -- so does that
11 mean you're going to help people lie to the police and frame innocent people in
12 order to help acquaintances get U visas? Because that's the logic behind this. And
13 that defies common sense.

14 MR. WESTBROOK: Objection, Your Honor. He's misstating the
15 argument. It defies common sense because it wasn't our argument.

16 THE COURT: Overruled. Argument's not evidence. Argument is --
17 is -- the argument of counsel is not to be construed as evidence. All right.

18 Let's continue.

19 MR. HAMNER: There were discrepancies with Amanda about hallways
20 and the order of what she told them. And our response is, And? Things coming
21 out every day. Remember -- it's a good thing you have your notes. Think about
22 how they describe these acts. Go to your notes and really read what these kids
23 said happened, and evaluate it with respect to these charges.

24 And remember, disclosure is a process. Is it surprising that kids
25 might tell about other things that happened a little bit later down the road? Many of

1 you were selected because you either are parents, grandparents, or you work with
2 kids. Think about it. Think about your own everyday common sense and
3 interacting with kids and whether eight-year-olds tell the exact same story if you tell
4 them each time you get to ask them to tell you. Or if it gets a little bit different here
5 or there. Use your common sense.

6 And -- and this was the interesting thing. There was this whole
7 part about, you know, why would they disclose when he's -- why would he make a
8 threat? Remember the taking away? Remember when defense got up and said,
9 Why would they make a threat? But that wasn't the full -- the whole -- the whole
10 thing wasn't, I'm going to take you far away. It was, I'm going to take you far away
11 to a beautiful place.

12 Now, how about this, ladies and gentlemen, how about the
13 defendant actually believed telling these kids I'm going to take you off to a beautiful
14 place was not a threat, but a fun, good thing? He's taking his princesses away on a
15 trip.

16 The problem was is the girls found it terrifying. What do you
17 mean, I'm not going to be with my mom anymore? I'm going to tell my mom.

18 So it's a miscalculation on his part. He thought he was doing a
19 good -- oh, I'm going to take you to this wonderful, beautiful place.

20 I don't want to go with you. I'm done. I'm telling Mom. Enough.

21 That's what happened. He wasn't threatening them. He was
22 trying to reward them again. It just backfired.

23 And he'd already taken them to McDonald's and 99 Cents. Yeah.
24 And what do we hear from some of these kids? He touched them there, too, like, in
25 the car.

1 MS. KIERNY: Objection. Misstates the evidence entirely.

2 THE COURT: Because it's connoting more than one person?

3 MS. KIERNY: No. No one said that he touched them in the car except
4 Yezline. But she says she never went to McDonald's or to the 99 Cents store.

5 MR. HAMNER: I -- I thought I heard there was touching on a later trip.
6 But I -- I can move on, Your Honor.

7 THE COURT: So that might have been a different trip. So sustain that
8 objection. And move on, please.

9 MR. HAMNER: So the question is --

10 THE COURT: So the argument that multiple people said that they were
11 touched on a trip to McDonald's or 99 Cent, that part is stricken from the argument.

12 Please continue.

13 MR. HAMNER: And -- and -- right. And so, as we talked about it, that's
14 what was kind of scary. Why was Chuck E. Cheese so -- so terrifying? Because it
15 was the first time that they were being told they were really being taken to a far
16 away place, truly away from their parents. That was different than those other trips.

17 And then they got to Ricardo. There was a comment, Scarlett is
18 a model example for lying kids in this case, because something happened with her
19 mom. Remember that? Remember that, really? And -- and where is his bias on
20 this? You know, he never even applied for a visa. He didn't even know this guy.

21 And so the -- I would submit to you, if -- if Scarlett is the meal
22 ticket, why hasn't he cashed in yet? Why?

23 MR. WESTBROOK: Objection. Burden shifting. All we know is that
24 he's -- he's gone to an immigration lawyer. If there's any other evidence --

25 THE COURT: Overruled. Overruled.

1 MR. HAMNER: As the evidence stands today, this -- Mr. Rangel got up
2 on the stand and told you, I have not applied for a U visa yet. That's the state of
3 the evidence before you right now.

4 So the question becomes if Scarlett's his meal ticket, why hasn't
5 he submitted this? Why?

6 The answer is because it's not about getting a U visa. He did this
7 because he wanted to protect his daughter. That is why he reported what
8 happened.

9 Maria, sending her alone -- remember, there was this whole thing
10 about -- she remembers sending Yezline alone. Well, with all due respect, ladies
11 and gentlemen, this evidence corroborates the description as to why she was in
12 that apartment alone, by herself. Because Mom sent her on the errand to go get
13 Elena for dinner.

14 But unfortunately for Yezline, Grandma wasn't home. It was
15 Grandpa. And that explains why she entered without the other girls, because she
16 was being sent on an errand by her mother. It's corroborative.

17 And Maria never mentioned Nicole initially? Please. So thus she
18 must be making it up. Well, how about this, you know, why in the world do you
19 need to tell this story? There's five kids already involved. Right? The suggestion
20 is, well, she's piling it on. Why? Think about -- at this moment, if there are five kids
21 already in it, what do you need a sixth kid for? I mean, how much more egregious
22 can he be at this point?

23 MS. KIERNY: Objection. Disparaging the defendant, belittling the
24 defendant.

25 MR. HAMNER: I'm talking in terms of the state of the case. I mean, I

1 can -- I can rephrase.

2 THE COURT: Well, I -- I think that probably shouldn't have been said.
3 So I'll sustain that.

4 Please disregard the -- the comment about egregiousness.

5 And let's please move on.

6 MR. HAMNER: And -- and what I mean, ladies and gentlemen, is the
7 number of children before Nicole has ballooned to five. So why you need a sixth?
8 This is not a case where they're short on alleged victims.

9 The State would submit this, it's likely forgotten initially, given the
10 severity of the things that he did to her -- his -- her other daughter. Because
11 Yezline is the wasn't who is kidnapped and taped up and sexually assaulted.

12 So in the grand scheme of things, when you're comparing your
13 infant daughter with an one-time incident, probably slipped her mind. Because
14 she's trying to remember all the things that he did to the one he had the most
15 exposure to, and that was Yezline.

16 Pacult decided that he was a failed groomer? Hardly. He
17 managed to keep these kids at bay for quite some time. And you heard them
18 explain that to you.

19 And poor grooming because it's done in public? I -- I would
20 submit, one, a lot of it was done in private. And two, the things he did in public
21 were done with the kids he had groomed with treats and fear. He was very good at
22 what he did.

23 An alleged poor police investigation, right? And I guess the
24 suggestion is that it's so poor, we have the wrong guy, or it didn't happen, or they're
25 just mistaken.

1 And we talked about the forensic processing. I'm not going to
2 toss you on this. We've already done it. I've talked about it already.

3 And then there's this -- well, maybe he didn't want anyone to
4 know about Leo and Litzi. So why does he turn over the audio statements, ladies
5 and gentlemen? I mean, if the police are conspiring to just hide evidence, why
6 does he give up these --

7 MR. WESTBROOK: Objection. Misstates the argument. We never
8 argued they were conspiring to hide evidence.

9 MR. HAMNER: The statement --

10 THE COURT: Well --

11 MR. HAMNER: -- from defense counsel was maybe he didn't want
12 anyone to know about Leo and Litzi.

13 THE COURT: I think the jury can --

14 MR. WESTBROOK: Alleging a conspiracy is also burden shifting. It's
15 indicating we have to prove a conspiracy, which we don't.

16 THE COURT: You're correct, you don't have to prove a conspiracy.
17 It's -- the defense doesn't have to prove anything. It's ultimately up to the State to
18 prove beyond a reasonable doubt each of the elements on all the crimes charged.

19 And, however, I've previously told the jury that, and I think they
20 understand that. So I will overrule your objection.

21 Go ahead.

22 MR. HAMNER: I mean, that -- that's -- I mean, that defies all logic
23 whatsoever. You can't hide someone from the other side by turning it over. That
24 doesn't make any sense.

25 And the notes and the security cameras. The there was a

1 comment, sure would like to have some security cameras. Remember heard that in
2 the closing? What did Detective Campbell tell you? I asked him, Do you have
3 camera footage from the northwest area? And they told him no. What more is he
4 supposed to do? He asked the right people. It didn't exist. That's not on the
5 detective.

6 MR. WESTBROOK: Your Honor, I have an objection to the slide. It
7 misstates the evidence. It says security cameras didn't exist in the slide.

8 In reality, the testimony was that footage of the defendant did not
9 exist, not that security cameras did not exist. Security cameras assuredly did exist.

10 THE COURT: Can I see the slide?

11 MR. HAMNER: Sure. And --

12 THE COURT: Can you go back.

13 Well, listen, I'm going to overrule that. I don't have to explain.
14 The jury heard the testimony. I'll let the jury interpret the testimony on their own.
15 All right.

16 MR. HAMNER: Please, ladies and gentlemen, check your notes about
17 that. Because I specifically asked him, what words did you ask the -- the managing
18 company? And he said northwest area. We threw up the picture, remember? I
19 said, is this the area over here? Is that area? And what did they tell you? There
20 were no cameras that had footage of that area. And I said what would you do if
21 they told you they did? And he said, I would have impounded it. It wasn't there.
22 And he asked.

23 Statements of counsel are not evidence. You get a whole
24 instruction on that. And that's an important thing, because in opening statement,
25 you heard a statement of, well, CSI searched my client's apartment. That never

1 happened. And we know now why. But that was said in an opening. It's not
2 evidence. It's important.

3 Ricardo Rangel applied for a U visa was said in opening
4 statements. That never happened.

5 The evidence will show coaching by parents, police, and
6 specialists. As the evidence stands today, there was no evidence that showed the
7 parents coached those kids, the police coached those kids, or the specialist
8 coached those kids. No evidence of this.

9 Phillip is my name, but I go by David, just like my client. Really?
10 So then why does the defendant in his interview deny up and down that his name
11 has never been David and he's never told anybody his name is David? Why?
12 Those are his words. The defendant's.

13 Leo and Litzi. How helpful were they, really? I know that they
14 don't see any conduct, but they corroborate the girls, the giving candy, giving
15 KitKats. He adamantly denies those things in his interview. Inviting the girls into
16 his house, the defendant adamantly -- these are the defense's witnesses, directly
17 contradicting the defendant.

18 This is very, very telling when we evaluate the credibility of the
19 defendant. When his own witnesses are saying something completely 180 degrees
20 different than him.

21 Professor Kagan, you know, look, he -- he basically -- I think he
22 kind of gives a good comment on immigration law and the process, but the bottom
23 line is here are the key things, those people are exposed for several years as they
24 wait, like Amanda and -- and Maria. He has no idea about their application, he
25 knows nothing about them personally. And he stands by every -- he talked a little

1 bit about kind of abuse, there's some potential abuse with the U visa, but he isn't
2 really able to kind of quantify it. But what he does tell us is I've stood by every
3 application I've ever filed. Right?

4 So what does he tell us? A whole lot -- not a whole lot, because
5 the reality is from an immigration perspective, they were exposed to removal
6 before, and as they testified here and as they stand here today -- well, they're not
7 here standing, but as we sit here today, they are still exposed to removal.

8 MR. WESTBROOK: Objection. Misstates the testimony. The first
9 point on the slide is completely wrong. They have protection.

10 THE COURT: Hold on.

11 MR. WESTBROOK: And he -- and he testified as such. He testified
12 that they have protection. Because even if they were deported, which is unlikely in
13 his opinion, they can come back by virtue of filing this and having it signed by the
14 lieutenant. That is protection. Being able to come back and return if you are
15 deported is protection. And he testified to that. And the slide is wrong, and that
16 misstates the evidence.

17 MR. HAMNER: It's not an incorrect statement.

18 THE COURT: Rps?

19 MR. HAMNER: My response is he said, specifically, after Las Vegas
20 Metropolitan Police Department certifies someone, they are not protected. He does
21 later say in a later point that if your application gets in --

22 THE COURT: Well, it could -- could --

23 MR. HAMNER: -- at some point other and it's approved, you can come
24 back in. But he categorically said they are still subject to removal proceedings at
25 the certification process.

1 MR. WESTBROOK: That misstates the evidence.

2 THE COURT: Well, I -- I think Ms. Kierny said it right and -- when she
3 said that there's some -- that Professor Kagan did acknowledge that once they're
4 certified, they're subject -- they have some level of protection. All right. And that's
5 what he said. That's what I remember.

6 MR. HAMNER: Okay.

7 THE COURT: And that's what Ms. Kierny said. And there is some
8 level. Obviously, you know, there's still some risk, as well.

9 MR. HAMNER: Okay.

10 THE COURT: So there's some risk and there's some protection. We're
11 going to leave it at that.

12 MR. HAMNER: Great.

13 THE COURT: Okay. Please continue.

14 MR. HAMNER: Which brings us finally to the defendant. We talked
15 about the credibility and I even talked about it, too, you know, if he -- he's not -- he
16 wasn't a witness, but we've heard this statement. But you should evaluate his
17 motive and fears when you listen to the things that were said during that interview.
18 It's important. It's very important.

19 And these are -- these are the words of defense counsel. Words
20 are important. See contradictions. Truth never changes. Test the words.
21 Remember that? Those are all these big quotes.

22 So let's -- let's test his words. Let's test the defendant's words.
23 Regarding being gone for weeks, what does he say? Well, yeah. And they're, like,
24 You didn't tell your wife anything? No, because I almost never tell my wife
25 anything.

1 Remember, October 17th is the day -- October 16th is the day
2 they tell their parents. And November 12th is the day of this interview. It's nearly a
3 month. And they're talking about, Look, your wife hasn't seen you for weeks. I
4 don't -- does that make sense, that a man wouldn't tell his wife for many, many
5 years that he's going to be gone for over a month? Does that make sense? No. It
6 doesn't.

7 MR. WESTBROOK: Objection. There's no testimony that he was gone
8 for over a month. There's no testimony that he was gone for weeks.

9 THE COURT: So --

10 MR. WESTBROOK: No testimony to that effect.

11 THE COURT: Overruled.

12 MR. HAMNER: As we heard from Detective Campbell, he related the
13 fact to the defendant, Your wife told me you were gone for weeks and you haven't
14 been seen. Where have you been?

15 I've been in Henderson working.

16 Have you told your wife?

17 I never tell my wife anything.

18 Does that make sense? This is an innocuous question. And the
19 answer is no, it doesn't.

20 Then he fled. And he says -- and remember -- and the reason
21 why he's gone -- and this is based -- this is based on the evidence, the
22 circumstantial evidence -- he fled -- this is what I talked about earlier -- his wife is
23 there when the kids disclose, he's --

24 MR. WESTBROOK: Objection. That misstates the testimony. The
25 wife was not there. She was specifically outside with Maria, and she was not

1 present for the disclosure. That's a matter of fact.

2 MR. HAMNER: I -- I appreciate all the speaking objections. But, I
3 mean, I think we should approach if we're going to keep doing this.

4 THE COURT: I'm overruling that objection.

5 As far as the statement here which says Defendant fled, you
6 have a flight instruction. And that instruction advises you that it's -- that you have to
7 determine whether there was flight beyond a reasonable doubt. All right. Look at
8 the instruction.

9 And let's continue.

10 MR. HAMNER: So -- so -- and the question, when it comes down to
11 that instruction, talks about you can consider circumstantial evidence to determine
12 whether or not a defendant flees after a crime is committed or after it's reported.

13 So the question that the State poses to you, ladies and
14 gentlemen of the jury, is why doesn't any of the other people living in that
15 community see him for the ensuing weeks after the children report being touched
16 by him? Why?

17 MR. WESTBROOK: Objection. Burden shifting.

18 MR. HAMNER: It's -- I haven't placed a burden on anyone,
19 Your Honor.

20 THE COURT: Over -- overruled.

21 MR. HAMNER: Why? Why is that? Let's set the stage.

22 THE COURT: This is not a burden. It's not burden shifting when you
23 ask a question.

24 MR. HAMNER: The evidence shows Elena was in that -- near that
25 apartment being outside when the kids are probably hysterical crying, telling what's

1 going on with them.

2 Remember, the evidence also shows that he was waiting to take
3 them off to Chuck E. Cheese away. So --

4 MS. KIERNY: Objection. Misstates the evidence. Again, Amanda said
5 that she -- they could not go, is what she testified to.

6 MR. HAMNER: And the children went back and talked to him and they
7 came back and told their parents, and said he became upset and says, no, they
8 can't -- your parents can't come. I'm taking you away.

9 THE COURT: That's how I recall it, so overruled.

10 MR. HAMNER: So let's set the stage. What's going on with him?
11 What do you think he must be thinking when these kids don't come back? What do
12 you think? And then they immediately run off and tell the police, you're trying to --
13 ladies and gentlemen, this is where circumstantial evidence kicks in.

14 He knows all the things he's done to these kids. He knows now
15 that this request to take them to a far off beautiful place didn't really work. He's got
16 to know, after given the fact his wife is there and how that whole outcome of the
17 field trip that day didn't work out, he had to have known that the children finally told.

18 So guess who disappears from the Charleston Gardens
19 Apartments for the next several weeks? Him. Him. And then he comes up with
20 this bizarre answer of, I never tell my wife about my whereabouts, or I don't tell her
21 anything? That doesn't make sense. He's hiding out in Henderson. He knew what
22 they said, and then he took off. And he was gone for nearly a month.

23 MR. WESTBROOK: Objection. Misstates the evidence. There is no
24 testimony that he was gone for a month.

25 THE COURT: So you already made that objection three times and I've

1 overruled that same objection. And you keep trying to argue to the jury your
2 understanding of the facts. And that's improper. And I caution you now to stop
3 doing that. All right.

4 MR. WESTBROOK: All right.

5 MR. HAMNER: Another innocuous question. Well, don't you miss your
6 dogs? I hear your dogs are your life. And he gives that response, No, I don't even
7 love myself. Weird. It's a weird comment.

8 Why? I just don't.

9 Then we get to another real basic question, telling people his
10 name is David. I mean, no, I have never told anyone my name is David. Well,
11 Amanda says that -- how long --

12 THE COURT: Mr. Hamner, haven't you covered this point already?

13 MR. HAMNER: I have. I'll -- I'll try to make through.

14 THE COURT: Let's try to wrap it up.

15 MR. HAMNER: Okay.

16 THE COURT: It's 6:15.

17 MR. HAMNER: I'm -- I'm trying my best, Your Honor.

18 THE COURT: All right.

19 MR. HAMNER: Bottom line --

20 THE COURT: Regarding my staff, you're on overtime.

21 MR. HAMNER: Okay.

22 THE COURT: All right. Thank you.

23 MR. HAMNER: Okay. Then he says, talking about the Moreno girls'
24 names, right? Yes, I know them. No, I don't know them. And a little less later on.
25 He's back and forth and flip-flopping. Why? Because the State would submit to

1 you, he's worried about acknowledging that he knows their names. Because he
2 knows what's been told. So it's I know them. No, I don't. Well, why are you trying
3 to force me to say something I don't know? Okay. Fine. And then he admits,
4 okay, I know Jatziri's name. He's panicking in this interview.

5 The truth doesn't change, as they say. But it changed for him.
6 How about the topic of the -- those girls coming to his house alone? He denied
7 doing that. But his -- his own witnesses got up here, Leo and Litzi, and said, yep,
8 I'd see them go in there alone, inviting boys and girls over for candy. Denied doing
9 that.

10 But in closing arguments, "Mr. Azucena did give these kids
11 candy." But he denied ever doing that.

12 And what about Leo and Litzi? What would be their angle for
13 saying something contradictory? There is no motive for them.

14 MR. WESTBROOK: Your Honor, objection. Statements of counsel are
15 not evidence. It was on the slide. I would object to that on the slide.

16 MR. HAMNER: I define it as being a quote from the closing.

17 MR. WESTBROOK: Statements of counsel are not evidence.

18 MR. HAMNER: I understand that.

19 THE COURT: Well, he -- it's still -- it's still fair argument. You can put
20 up -- you can put up on a slide argument of opposing counsel and explain why you
21 disagree with the argument. And that's -- that is fair argument opposing. So
22 overruled.

23 MR. HAMNER: I'm basically -- and I'm just going to -- I'm almost done.

24 So then we get to the big point, right? Abusing girls. He denied
25 doing that. Right? But he also denied knowing his name was David; he apparently

1 never talks to his wife for weeks; never gives boys and girls candies; and never
2 invites these girls alone into his home.

3 So ladies and gentlemen, do you really expect them -- him to
4 acknowledge, then, if he's denying all those innocuous things, that he's abusing
5 children? No. He went straight No the whole interview.

6 Don't do a thing until you see the evidence. That was something
7 that was brought up in an opening statement.

8 Well, you've heard from all these children. You've seen the
9 photos that corroborate a lot of the activity. You've heard from their parents.
10 You've heard from neighbors. You've heard from forensic interviews and police
11 officers. You've seen now the defendant's words and their -- and his actions. And
12 you've even heard from corroborating witnesses from the defense, like Leo and
13 Litzi, who actually corroborate these children.

14 You have now seen the evidence. And as we said in opening
15 statements, it's extensive and it's compelling. We have proven this case beyond a
16 reasonable doubt. We ask you to find him guilty on every single case. Because
17 this was a case in which he used trust, treat, and fear to systemically abuse these
18 children sexually, and he should be held accountable on every single count with the
19 exception of Count 23.

20 Is that correct?

21 Please, ladies and gentlemen, send a message that you know
22 what he did --

23 MR. WESTBROOK: Objection. Golden rule, Your Honor.

24 MR. HAMNER: That's not the golden rule.

25 MR. WESTBROOK: Send a message.

1 MR. HAMNER: To the defendant? That is not the golden rule.

2 THE COURT: Well, we didn't actually hear his -- his full statement,
3 because you objected before he --

4 MR. HAMNER: I'll -- I'll --

5 THE COURT: You are allowed to say send a message in certain
6 instances and in certain instances you're not. I've got to hear his whole statement
7 before I can rule on your objection.

8 MR. HAMNER: I'll -- I'll rephrase. I'm not even going to touch it.
9 Bottom line --

10 THE COURT: Okay.

11 MR. HAMNER: -- ladies and gentlemen, here's -- here's the deal. Hold
12 him accountable for what he did to these kids. Hold him accountable for keeping
13 them in fear of losing their parent and being subject to this abuse. Hold him
14 accountable for the crimes that he committed. Find him guilty.

15 Thank you.

16 THE COURT: All right. Well, ladies and gentlemen of the jury, you've
17 now heard all the evidence and all of the argument of counsel. So this matter is
18 now submitted to you.

19 What I am going to do is ask the court clerk to please swear in
20 the officers that will take charge of the jury. And -- and at this point, also -- well,
21 first, let's find out what time you all want to come back tomorrow.

22 I'll be here at 8:00, but we would normally start at 9:00. But
23 because you guys have been so attentive, I'll -- I'll let you start 10:00, if you want to
24 start at 10:00. Who wants to start at 9:00 and who wants to start at --

25 If you want to start at 9:00, it's going to be the first choice. If you

1 want to start at 10:00, that's the second choice.

2 Who wants to start at 9:00? Raise your hand. Just raise your --
3 who wants to start at 10:00? Raise your hand. All right, good. You probably want
4 to start later than 10:00. But I've got to get you guys going on this. All right. All
5 right. So you can be here at 10:00, then, please.

6 And we also have to identify the two alternates.

7 Now, this is -- the alternates play a very important role, because
8 you -- we never know if we're going to need the alternates.

9 Generally the trial is over a couple days, we -- we have a --
10 actually, if the trial is over one day, I have one alternate. And if the trial is going to
11 go over a week, I have two alternates.

12 So we have two alternates here and they will still continue to play
13 an important role. You need to be ready in case a juror is not able to complete its
14 service. And so at this point in time, I'm going to ask the court clerk to please
15 identify the two alternates.

16 THE CLERK: Juror No. 13, Kathleen Schneider; and Juror No. 14,
17 Loreto Agbuya.

18 THE COURT: All right. So you two are the alternates. And you still
19 need to be available and on call. And provide information to the court clerk, who is
20 going to take charge of you. And you still can't discuss the case with anybody.

21 The same admonishment applies to -- that -- that you had before.
22 You cannot discuss the case; you can't do any research; you can't do any
23 investigation; you can't form any opinions; you can't seek any information about the
24 case from any source; and you just need to be ready, willing, and able to take the
25 place of a -- of a juror. All right.

1 Will you please swear in the officers.

2 [Bailiffs sworn.]

3 THE COURT: All right. So we're going to excuse the jurors through
4 this -- the back door. You're going to bring your -- the regular jurors are going to
5 keep your notes with you and keep the jury instructions that you have. Just bring
6 all your belongings. And then the court officer will then excuse you for the evening
7 and you're ordered to come back here at 10:00 in the morning. All right. So they'll
8 take you out that way and around. They'll show you where you're going to be
9 deliberating tomorrow at 10:00.

10 Tomorrow, when you come in at 10:00 --

11 Marshal, where are you going to -- where do you want them to
12 meet you?

13 THE MARSHAL: At 10:00?

14 THE COURT: Yeah. All right. So meet up there at the front door.

15 The two alternates, hang -- hang back for a moment. And
16 Melody Howard is going to take charge of you over here on this door. Bring your
17 notes with you, and you're probably going to hand those to her, because you don't
18 bring your notepads home. All right.

19 Thank you very much. All rise for the jurors.

20 [Jury recessed for deliberation at 6:22 p.m.]

21 THE COURT: And the jurors are all admonished not to talk about the
22 case or form any opinions, do any research until tomorrow morning when you can
23 start to deliberate. All right.

24 The jurors are excused.

25 And now the alternates. And just shut the door now.

1 The alternates are now excused. All right.

2 Anything to put on the record?

3 MR. WESTBROOK: Nothing, Your Honor.

4 THE COURT: Make sure you leave your phone numbers with the court
5 clerk so that tomorrow she can call you and let you know if -- if and when we have a
6 verdict.

7 MS. KIERNY: Are they deliberating --

8 THE COURT: It's not uncommon to get questions, so if I do get a
9 question, I'll call you guys back here. We'll do that on the record.

10 MS. KIERNY: Are they deliberating tonight?

11 THE COURT: No.

12 MS. KIERNY: Oh, okay.

13 THE COURT: Not deliberating -- no. It's 6:20.

14 MS. KIERNY: That's what I figured. But I -- I thought --

15 THE COURT: No. I but I just wanted them to -- just to go out the back
16 door.

17 MS. KIERNY: Okay.

18 THE COURT: And let them know that they're now a sworn-in jury --

19 MS. KIERNY: I just wanted to make sure I could go home.

20 THE COURT: -- that's deliberating.

21 You can go home. They're not going to have any decision
22 tonight.

23 MS. KIERNY: Perfect.

24 THE COURT: All right? I am late for my meeting. I need to get to that.

25 Bye.

1 MS. KIERNY: Sorry, Judge.

2 THE COURT: That's okay. No, that's part of the...

3 [Court recessed at 6:23 p.m., until the following day, May 9, 2017, at 4:03 p.m.]
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15 ATTEST: I do hereby certify that the foregoing is a true and correct transcript from
16 the audio/visual recording of the proceedings in the above-entitled case.
17

18 

19 _____
20 Shawna Ortega, CET*562
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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

TUESDAY, MAY 9, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 11**

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

1 **LAS VEGAS, NEVADA, TUESDAY, MAY 9, 2017**

2 [Proceedings commenced at 4:03 p.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: All right. All right, we're back on the record in *State vs.*
6 *Azucena*, C-321044.

7 Here is the -- I'll show you guys the note that we received from
8 the jurors. And -- and then I -- I had it marked as a court exhibit with my notes of
9 our just brief discussions.

10 I just wrote here, discussed with parties and counsel on phone
11 at 3:20. No consensus.

12 Defendant objects to *Allen* charge.

13 And jail call for return of Defendant at 3:28.

14 Called parties back at 3:44.

15 State requested *Allen* charge.

16 Defendant objects to *Allen* charge.

17 Court requested counsel to appear and make a record.

18 No response give to the jury yet, 3:47.

19 I just wanted that as an exhibit.

20 MR. WESTBROOK: And Your Honor, can we read that into the record,
21 the actual note?

22 MS. KOLLINS: He just did.

23 THE COURT: Oh, the actual -- the jurors' note?

24 MR. WESTBROOK: The jurors' note, yeah.

25 THE COURT: Yeah. Good.

1 We have one jury that believes not guilty on all counts. What is
2 our next step? Can you talk to him? Signed, which appears to be the signature of
3 Rhonda Gonzalez, Juror No. 11. All right. That is marked as a court exhibit. All
4 right.

5 MR. WESTBROOK: Thank you, Your Honor.

6 THE COURT: I'll let you guys both make a record.

7 The jurors have been deliberating since 10:00 today, I guess.
8 And they had lunch, so 10:00 to 4:00 is six hours of deliberations. My view is that I
9 think it's premature to -- even in light of the note to -- premature to declare a hung
10 jury. And it's premature for me to exercise my right to inquire of the individual jurors
11 yet, as to whether there's a problem with the deliberations.

12 So I think the appropriate thing to do, since I've got to tell the
13 jurors something, is to -- to give them an *Allen* charge. I think the -- the State is
14 okay with an *Allen* charge. And I think the defense is against it.

15 Let me hear the -- the defense's reasons.

16 MR. WESTBROOK: All right. Your Honor, at this point, we believe that
17 an *Allen* charge -- we believe that all *Allen* charges are inherently coercive. We
18 disagree with all *Allen* charges. We think that they should be outlawed. This is
19 something that the Nevada Supreme Court has considered time and again, and
20 they should consider it again.

21 In this particular case, given the fact that we know it's 11 to 1, an
22 *Allen* charge would be unduly coercive. It would essentially be the power of the
23 court backing up the majority versus the minority.

24 THE COURT: We don't really have its 11 to 1. We know that there's
25 one that wants not guilty on all charges. And we don't know what -- how the

1 other 11 -- the other 11 might be not guilty on some charges and guilty on some.
2 We don't know. They didn't tell us that.

3 MR. WESTBROOK: They might be, Your Honor. And that would be a
4 secondary concern, which I'll get to in a second.

5 THE COURT: Okay.

6 MR. WESTBROOK: We believe that issuing an *Allen* charge, given
7 the -- given the division, Your Honor, we can safely assume that the 11 -- one of the
8 foremen to send this note -- we know there's only one person who is not guilty on
9 all counts because of the note.

10 Therefore, I think that my point about 11 versus 1, at least as it
11 relates to not guilty on all counts, is valid.

12 The 11 -- there -- there must not be another person within that 11
13 who wants to say not guilty on all counts, otherwise, the note makes no sense.

14 Doing an *Allen* charge would violate due process under the Fifth
15 and Fourteenth Amendments in the Nevada Constitution. It would also violate my
16 client's Sixth Amendment rights to a trial by a fair and impartial jury. We think it
17 would be structural in nature, and we object to an *Allen* charge.

18 THE COURT: What would you request of the -- the court do at this
19 time? Just ignore the note and let them keep deliberating?

20 MR. WESTBROOK: The court has options. One would be to ignore
21 the note and let them keep deliberating, I suppose. Another one would be a
22 mistrial.

23 THE COURT: After only six hours?

24 MR. WESTBROOK: If there's -- if you believe there's a manifest
25 necessity, that would be a mistrial.

1 THE COURT: Yeah. I -- I don't find that after -- after just six hours.

2 MR. WESTBROOK: I understand, Your Honor.

3 THE COURT: Especially with a case that was two weeks with all the
4 detailed information. You guys gave a lot of -- and -- and your closings combined
5 were two and a half hours.

6 MR. WESTBROOK: I -- I agree, Your Honor.

7 THE COURT: So.

8 MR. WESTBROOK: But, you know, unfortunately, my -- my personal
9 lack of enthusiasm about redoing a two-week case and the bother and expense is
10 not --

11 THE COURT: Yeah.

12 MR. WESTBROOK: -- is not a factor.

13 THE COURT: Well, what's realistic? Give me a -- give me a realistic
14 position on what I should do.

15 MR. WESTBROOK: My realistic position is that if the jury is hung, the
16 jury is hung.

17 Now, I will say this, if there is a certain -- if -- if there is any count
18 on which everybody is unanimous as to a not guilty -- we know there can't be any
19 count to which they're unanimous on guilty, because there's one juror who says --
20 he wants full acquittal. So we know it's not that case.

21 If there is any count in this 39 or 38-count indictment on which
22 they are unanimous not guilty, then we could question the jury about that. And if it's
23 the case, then he should be found not guilty on those counts and they can continue
24 deliberating on the other counts. Or the judge could, you know, declare a hung jury
25 or a mistrial on the remaining counts.

1 However, he's entitled to that not guilty verdict if they're
2 unanimous not guilty on anything.

3 THE COURT: So are you -- are you requesting, then, that the court
4 conduct an inquiry of the jurors as to their deliberations?

5 MR. WESTBROOK: The only inquiry that would be appropriate would
6 be an inquiry as to whether they're unanimous on any single count.

7 THE COURT: Hmm.

8 MR. WESTBROOK: It would be an absolute violation --

9 THE COURT: Isn't that kind of ignore their note, then?

10 MR. WESTBROOK: Well, the -- the court is interested in having an
11 unbiased jury and not --

12 THE COURT: Of course.

13 MR. WESTBROOK: -- interfering in the -- in the deliberation process,
14 not necessarily satisfying the jury's, you know, every question.

15 The bigger issue here is my client's Fifth, Fourteenth, and Sixth
16 Amendment rights; not whether or not the jury is satisfied with an answer. But it
17 would be an error to try to weed out whether or not somebody is not participating in
18 deliberations. Not agreeing with the majority is in no way a sign that somebody's
19 not participating in deliberations. We have no indication that someone's not
20 participating.

21 I have seen notes in trials before where they say, you know,
22 Juror No. 6 is not participating in deliberations at all, just sitting in a corner. That's
23 a different scenario.

24 We can't even ask the question about whether somebody is not
25 participating without putting undue pressure on this jury, and that would be a

1 violation of my client's constitutional rights, as mentioned.

2 THE COURT: I understand your position. Anything else you wanted to
3 say?

4 MR. WESTBROOK: Let me check my notes. Did I get it? All right. I
5 got it. Thank you, Your Honor.

6 THE COURT: Before I decide what to do, does the State want to
7 respond to that or put anything else on the record?

8 MR. HAMNER: I -- yes, Your Honor.

9 I think Your Honor's initial instincts, I think, are correct. This is a
10 six-victim, 39-count case that's -- we're now into -- starting into the third week of
11 trial. They've only deliberated for six hours.

12 I think an *Allen* charge is not unduly coercive. I think it's
13 appropriate in this situation.

14 I -- I would at least address on the record opposing counsel's
15 claim that there's absolutely no indication of -- or any evidence of potentially a juror
16 refusing to deliberate.

17 I -- I would agree with the sense that there is not an express
18 sentence in the instruction -- or in the juror question that reflects a refusal to
19 deliberate. But I think an inference can be made -- a reasonable inference can be
20 made when someone's asking the court for help about one particular juror, there is
21 a suggestion there that there's a possibility -- he doesn't have to agree with it -- but
22 there is a possibility that the situation is you have one person refusing to talk, which
23 is why I think a mistrial --

24 THE COURT: But it's a possibility.

25 MR. HAMNER: It is. It's a possibility. Which I think is why declaring a

1 mistrial at this point would be improper.

2 I think an *Allen* charge is probably the right remedy, given the
3 number of charges, the timing in which they've deliberated for right now. Because
4 you may very well -- I mean, we -- we don't know what's going to happen if you just
5 let them go back and -- and talk some more.

6 So I think at this --

7 THE COURT: I've never had a case where the jurors collectively have
8 said, Go talk to this holdout. That's -- that's kind of unusual to me.

9 MR. HAMNER: And I -- and I -- and to me, and the State's position on
10 that, is that that's probably an inference to maybe someone's refusing to talk to
11 them. And -- and I understand the court's reluctance to do it at this stage. So I -- I
12 get that, and I want to respect -- I mean, I know the court's entitled to do it when
13 they believe that there may be a situation where the juror's not deliberating --
14 refusing to follow their kind of obligations under the law. The court can make an
15 inquiry of the jury and that particular juror about what is happening. You can do
16 that in a limited fashion.

17 But I understand that the court doesn't want to do it at this stage,
18 and that's fine.

19 THE COURT: Right.

20 MR. HAMNER: But I think an *Allen* charge is appropriate, a mistrial is
21 not.

22 THE COURT: So I -- I am going to give the *Allen* charge at this point.
23 You know, I'm going to track the exact language that's in the footnote to the
24 *Staudt vs. State* case, 112 Nevada 1 (1996), which is the current approved
25 language.

1 And since it's 4:15, I'm -- after I give them that instruction, I'm
2 going to tell them that, given the lateness of the hour, there's no further
3 deliberations tonight. I'm going to send them home and have them come back
4 tomorrow at 9:00.

5 MR. HAMNER: Okay. Sounds good.

6 MR. WESTBROOK: Your Honor, would you mind reading the -- the
7 language in -- into the record, just so we know exactly what it is.

8 THE COURT: I'll read it. Sure.

9 MR. WESTBROOK: Thank you.

10 THE COURT: The verdict must represent the considered judgment of
11 each juror. In order to return a verdict, it is necessary that each juror agree thereto.
12 Your verdict must be unanimous. It is your duty as jurors to consult with one
13 another and to deliberate with a view to reaching an agreement, if you can do so
14 without violence to individual judgment.

15 Each of you must decide the case for yourself, but do so only
16 after an impartial consideration of the evidence with your fellow jurors. In the
17 course of your deliberations, do not hesitate to re-examine your own views and
18 change your opinion if convinced it is erroneous, but do not surrender your honest
19 conviction as to the weight or effect of evidence solely because of the opinion of
20 your fellow jurors or for the mere purpose of returning a verdict.

21 You are not partisans. You are judges, judges of the facts. Your
22 sole interest is to ascertain the truth from the evidence in the case.

23 MR. WESTBROOK: Okay. We -- we object to the instruction for the
24 reasons I stated before. We also object on separate grounds to telling them they
25 don't have to deliberate anymore after giving that instruction.

1 I think it should be up to the jury whether they want to continue
2 deliberating, and I think it would be coercive to give that instruction and it would
3 emphasize the effect of that instruction if you then say, go -- go home, because it's
4 like, you you'd better go home and think about it. Think about -- you know, go
5 home and think about what you've done, juror who is holding out. I mean, that's the
6 effect that we want to avoid. I understand that's not the court's intent. I'm --

7 THE COURT: Well --

8 MR. WESTBROOK: -- I'm concerned that that would be the effect.

9 THE COURT: -- I could let them deliberate for another half an hour.
10 Would you prefer that?

11 MR. WESTBROOK: I -- I would. If the court is set on giving an Allen
12 charge over our objection --

13 THE COURT: I do.

14 MR. WESTBROOK: -- then --

15 THE COURT: I -- when this --

16 MR. WESTBROOK: Yeah.

17 THE COURT: -- the language -- this is the ABA approved language.
18 It's approved by *Wilkins v. State*, it's approved by *Allen*, it's approved by *Staude*.
19 It's the language I'm going to give. So.

20 MR. WESTBROOK: I understand, Your Honor. I just --

21 THE COURT: I'm not going to tinker with the language.

22 MR. WESTBROOK: Yeah. Oh, I understand completely.

23 THE COURT: But you want them --

24 MR. WESTBROOK: I just wanted to make it clear that we're objecting.
25 That's all.

1 THE COURT: You want them to deliberate for another half an hour.

2 MR. WESTBROOK: If the court is going to *Allen* charge them --

3 THE COURT: All right.

4 MR. WESTBROOK: -- I would prefer that they not be released.

5 THE COURT: Let's bring them in.

6 MR. WESTBROOK: Thank you.

7 THE COURT: Or -- or hold on.

8 Thank you. That's a brilliant idea.

9 Or I could excuse them for the evening and give them the *Allen*
10 charge in the morning when they come back.

11 MR. HAMNER: The State would be fine with that.

12 THE COURT: Would that -- would that be -- would that -- would --
13 would that -- I mean, your objection is protected. You're not waiving anything. But
14 would that be better in the interest of your client?

15 MR. WESTBROOK: We submit, Your Honor.

16 THE COURT: Okay. Well, since the jurors gave me this note
17 around 2:55 or so, I -- and they've been sitting for a long time without any
18 instructions, I think I'm going to give the -- the *Allen* instruction, then let them
19 deliberate for a half an hour. All right.

20 MR. WESTBROOK: Sure.

21 THE COURT: We're not going to have a verdict tonight, I know that,
22 because they -- they're going to --

23 MR. WESTBROOK: Sure.

24 THE COURT: -- I'm sure they're going to want to think about this some
25 more.

1 MR. WESTBROOK: And I apologize, Your Honor. Do we call them in
2 to give them the *Allen* charge or do you send it back?

3 THE COURT: I have to, yeah.

4 MR. WESTBROOK: Okay.

5 THE COURT: No, I have to bring them in.

6 MR. WESTBROOK: I just couldn't remember what we did on that.

7 THE COURT: Yeah, bring them in.

8 Thank you, marshal.

9 And I need the -- the note back. I need the -- I need the court
10 exhibit. Thank you.

11 [Pause in proceedings.]

12 [Jury reconvened at 4:17 p.m.]

13 THE COURT: Please be seated, everybody. We are on the record.
14 This is *State vs. Azucena*, Case No. C-321044.

15 The court had received I think around 2:50 or so, a note from the
16 jurors. And the note says:

17 We have one juror that believes not guilty on all counts. What is
18 our next step? Can you talk to him?

19 It appears to be signed by I think it's Juror No. 11, Rhonda
20 Gonzalez; is that correct?

21 JUROR NO. 11: Correct.

22 THE COURT: Ms. Gonzalez, did you sign this because you're the
23 foreperson?

24 JUROR NO. 11: Yes.

25 THE COURT: Okay. So I have a question. So we received this and

1 the court has an official response. And I have that. All right.

2 The court's response is as follows:

3 The verdict must represent the considered judgment of each
4 juror. In order to return a verdict, it is necessary that each juror agree thereto.
5 Your verdict must be unanimous. It is your duty as jurors to consult with one
6 another and to deliberate with a view to reaching an agreement if you can do so
7 without violence to individual judgment.

8 Each of you must decide the case for yourself, but do so only
9 after an impartial consideration of the evidence with your fellow jurors. In the
10 course of your deliberations, do not hesitate to re-examine your own views and
11 change your opinion if convinced it is erroneous, but do not surrender your honest
12 conviction as to the weight or effect of evidence solely because of the opinion of
13 your fellow jurors or for the mere purpose of returning a verdict.

14 You are not partisans. You are judges. Judges of the facts.
15 Your sole interest is to ascertain the truth from the evidence in the case.

16 So that concludes the -- the written response.

17 What I'm going to do now is to excuse you back to the
18 deliberation room. You will continue deliberating, as long as you determine it's
19 appropriate.

20 And I'll -- you can go until -- you can go another half an hour, and
21 then, unfortunately, given the lateness of the hour, we need to excuse you. And I
22 need you back here at 9:00 a.m. to continue with -- with your duties. All right.

23 With that, I will go ahead and respectfully excuse you.

24 Marshal, please take them back to the deliberation room.

25 Oh, one second. When -- when the marshal excuses you, I'm

1 going to read the admonishment that's going to apply, so he doesn't need to reread
2 it. All right. When you're excused for the evening, during the overnight recess, you
3 are admonished as follows:

4 While outside the jury deliberation room, you must not
5 communicate among yourselves or with anybody else about the case; you must
6 never communicate at all with the parties, the attorneys, or any witnesses; you
7 must not seek or obtain any information about the case or the issues in the case
8 from any source; you must not perform any research or investigation; you must not
9 read anything about the case; you must never post anything about the case on any
10 social media site; and you must not develop any opinions why outside the
11 deliberation room. All right.

12 Thank you very much. You are -- you are excused back to the
13 deliberation room. And the marshal will excuse you in a half an hour. All right.

14 [Jury recessed for further deliberation at 4:21 p.m.]

15 THE COURT: All right. Please be seated. We are outside the
16 presence of the jury.

17 I really don't think that they're going to do anything in the next
18 half hour, but if they do, we'll contact you right away. And if we don't hear -- if you
19 don't hear from me, that means they went home without incident, and they're going
20 to be back here at 9:00 and they'll continue deliberating. If I get anymore
21 questions, I'll get you guys on the phone.

22 MR. HAMNER: Thanks so much, Your Honor.

23 MS. KIERNY: Thank you.

24 THE COURT: All right.

25 MS. KOLLINS: Not that I'm critical --

1 THE COURT: Talk to you guys later.

2 MS. KOLLINS: Not that I'm critical, but I will have to go to Laughlin
3 tomorrow for two days for a case, so I won't be here. If somebody's trying to find
4 me. Okay.

5 THE COURT: All right.

6 MS. KOLLINS: Thanks.

7 THE COURT: Well, we'll try to carry on without you.

8 MS. KOLLINS: Hammy will be here.

9 MR. HAMNER: I'll be here.

10 THE COURT: Thank you. Okay. Good evening, everybody.

11 MS. KOLLINS: Well, in case you call me and I'm not answering, I don't
12 want you to think --

13 [Court recessed at 4:22 p.m., until the following day, May 10, 2017, at 11:40 a.m.]

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19 ATTEST: I do hereby certify that the foregoing is a true and correct transcript from
20 the audio/visual recording of the proceedings in the above-entitled case.

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Shawna Ortega, CET*562



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

WEDENSDAY, MAY 10, 2017

**TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL - DAY 12**

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

1 **LAS VEGAS, NEVADA, WEDNESDAY, MAY 10, 2017**

2 [Proceedings commenced at 11:40 a.m.]

3
4 [Outside the presence of the jury.]

5 THE COURT: Please be seated. All right.

6 I've been informed that the jury reached a verdict. So we're -- are
7 we ready to bring the jurors in?

8 MS. KIERNY: Yes, Your Honor.

9 MR. HAMNER: Yes, Your Honor.

10 MR. WESTBROOK: Yes, Your Honor.

11 THE COURT: All right. Well, may we please proceed.

12 MR. WESTBROOK: And Your Honor, when we read this out, we'll just
13 read the name of the charge, the count and the name of the charge, correct?

14 MS. KIERNY: Or do they just do Count 1?

15 THE COURT: Well, they read the whole verdict as written.

16 MS. KIERNY: Okay.

17 MR. WESTBROOK: Okay. Great.

18 [Pause in proceedings.]

19 [Jury reconvened at 11:43 a.m.]

20 THE COURT: All right. Please be seated.

21 The record will reflect the presence of the defendant and his
22 attorneys and the deputy district attorney. Do the parties stipulate to the presence
23 of the jury?

24 MR. WESTBROOK: Yes, Your Honor.

25 MR. HAMNER: Yes, Your Honor.

1 THE COURT: All right. Has the jury elected a foreperson?
2 JUROR NO. 11: Yes.
3 THE COURT: All right. And will the -- who is the foreperson?
4 Go ahead and state your name.
5 JUROR NO. 11: Rhonda Gonzales.
6 THE COURT: All right. Ms. Gonzales, has the jury reached a verdict?
7 JUROR NO. 11: Yes.
8 THE COURT: All right. The foreperson will please hand the verdict to
9 the marshal.
10 And the marshal will present it to me to examine. All right.
11 Will the court clerk please read the verdict out loud.
12 THE CLERK: District Court, Clark County --
13 THE COURT: Will the defendant and his counsel please stand.
14 MR. WESTBROOK: Yes, Your Honor.
15 THE CLERK: District Court, Clark County, Nevada, the *State of*
16 *Nevada, Plaintiff, vs. Jose Azucena, Defendant*, Case No. C-17321044,
17 Department 2, Verdict.
18 We, the jury, in the above-entitled case find the defendant, Jose
19 Azucena as follows:
20 Count 1, lewdness with a child under the age of 14: Guilty of
21 lewdness with a child under the age of 14.
22 THE COURT INTERPRETER: Excuse me, excuse me. Would you
23 mind going a little bit slower?
24 THE CLERK: Yes.
25 THE COURT INTERPRETER: Thank you.

1 THE CLERK: Count 2, lewdness with a child under the age of 14:
2 Guilty of lewdness with a child under the age of 14.
3 Count 3, child abuse, neglect, or endangerment: Guilty of child
4 abuse, neglect, or endangerment.
5 Count 4, indecent exposure: Guilty of indecent exposure.
6 Count 5, lewdness with a child under the age of 14: Not guilty.
7 Count 6, attempt lewdness with a child under the age of 14:
8 Guilty of attempt lewdness with a child under the age of 14.
9 Count 7, lewdness with a child under the age of 14: Not guilty.
10 Count 8, child abuse, neglect, or endangerment: Guilty of child
11 abuse, neglect, or endangerment.
12 Count 9, lewdness with a child under the age of 14: Guilty of
13 lewdness with a child under the age of 14.
14 Count 10, child abuse, neglect, or endangerment: Guilty of child
15 abuse, neglect, or endangerment.
16 Count 11, indecent exposure: Guilty of indecent exposure.
17 Count 12, guilty -- excuse me -- child abuse, neglect, or
18 endangerment: Guilty of child abuse, neglect, or endangerment.
19 Count 13, lewdness with a child under the age of 14: Not guilty.
20 Count 14, lewdness with a child under the age of 14: Guilty of
21 attempt lewdness with a child under the age of 14.
22 Count 15, lewdness with a child under the age of 14: Guilty of
23 lewdness with a child under the age of 14.
24 Count 16, lewdness with a child under the age of 14: Guilty of
25 lewdness with a child under the age of 14.

Count 17, lewdness with a child under the age of 14: Guilty of lewdness with a child under the age of 14.

Count 18, lewdness with a child under the age of 14: Guilty of lewdness with a child under the age of 14.

Count 19, child abuse, neglect, or endangerment: Guilty of child abuse, neglect, or endangerment.

Count 20, indecent exposure: Guilty of indecent exposure.

Count 21, lewdness with a child under the age of 14: Not guilty.

Count 22, attempt lewdness with a child under the age of 14: Guilty of attempt lewdness with a child under the age of 14.

Count 23, child abuse, neglect, or endangerment: Not guilty.

Count 24, first-degree kidnaping: Guilty of first-degree kidnaping.

Count 25, sexual assault with a minor under the age -- under 14 years of age: Guilty of assault -- sexual assault with a minor under the age of 14.

Count 26, lewdness with a child under the age of 14: Guilty of lewdness with a child under the age of 14.

Count 27, lewdness with a child under the age of 14: Guilty of lewdness with a child under the age of 14.

Count 28, sexual assault with a minor under 14 years of age: Not guilty.

Count 29, lewdness with a child under the age of 14: Guilty of lewdness with a child under the age of 14.

Count 30, child abuse, neglect, or endangerment: Guilty of child abuse, neglect, or endangerment.

1 Count 31, indecent exposure: Guilty of indecent exposure.
2 Count 32, child abuse, neglect, or endangerment: Guilty of child
3 abuse, neglect, or endangerment.
4 Count 33, lewdness with a child under the age of 14: Not guilty.
5 Count 34, attempt lewdness with a child under the age of 14:
6 Guilty of attempt lewdness with a child under the age of 14.
7 Count 35, lewdness with a child under the age of 14: Guilty of
8 lewdness with a child under the age of 14.
9 Count 36, lewdness with a child under the age of 14: Guilty of
10 lewdness with a child under the age of 14.
11 Count 37, lewdness with a child under the age of 14: Not guilty.
12 Count 38, child abuse, neglect, or endangerment: Not guilty.
13 Count 39, indecent exposure: Guilty of indecent exposure.
14 Dated this 10th day of May, 2017. Signed by Foreperson
15 Rhonda Gonzales.
16 Is this your -- ladies and gentlemen of the jury, are these your
17 verdicts as read, so say you one, so say you all?
18 JURY PANEL: Yes.
19 THE COURT: Do either of the parties desire to have the jury polled?
20 MR. HAMNER: No, Your Honor.
21 MR. WESTBROOK: Yes, Your Honor.
22 THE COURT: All right. Madam Clerk, will you please poll the jurors as
23 to their verdict individually.
24 THE CLERK: Charles -- excuse me -- Mr. Elliston, is this your verdict
25 as read?

1 JUROR NO. 1: Yes.
2 THE CLERK: Mr. Mergener, is this your verdict as read?
3 JUROR NO. 2: Yes.
4 THE CLERK: Ms. Thomas, is this your verdict as read?
5 JUROR NO. 3: Yes.
6 THE CLERK: Ms. Klosowski, is this your verdict as read?
7 JUROR NO. 4: Yes.
8 THE CLERK: Mr. Bucalo, is this your verdict as read?
9 JUROR NO. 5: Yes.
10 THE CLERK: Mr. Hudson -- I'm sorry -- Ms. Hudson, is this your verdict
11 as read?
12 JUROR NO. 6: Yes.
13 THE CLERK: Mr. LaCroix, is this your verdict as read?
14 JUROR NO. 7: Yep.
15 THE CLERK: Ms. Donato, is this your verdict as read?
16 JUROR NO. 8: Yes.
17 THE CLERK: Mr. Buasuwan, is this your verdict as read?
18 JUROR NO. 9: Yes.
19 THE CLERK: Ms. Zurzolo, is this your verdict as read?
20 JUROR NO. 10: Yes.
21 THE CLERK: Ms. Gonzales, is this your verdict as read?
22 JUROR NO. 11: Yes.
23 THE CLERK: And Ms. Trosclair, is this your verdict as read?
24 JUROR NO. 12: Yes.
25 THE COURT: Very good. Thank you, Madam Clerk.

1 Ladies and gentlemen, as you know, the right to trial by jury is
2 one of our more basic and fundamental constitutional guarantees, and I strongly
3 believe in this right. That is the right of every person accused of a crime to be
4 judged by a fair and impartial jury.

5 We must have jurors, and unfortunately jury service is something
6 that many people shirk from. They do not wish to become involved.

7 That's why I'm pleased that all of you men and women have been
8 willing to give up your valuable time, and you have been most attentive
9 conscientious. I thank you.

10 On behalf of the counsel, the parties, and the Eighth Judicial
11 District Court, I thank you for your careful deliberation which you have given to this
12 case.

13 The question may arise as to whether you may now talk to other
14 cases regarding this matter. I advise you that you may, if you wish, talk to other
15 persons and discuss your deliberations which you gave to this case. You are not
16 required to do so, however.

17 We have some more business to take care of here, just for a few
18 minutes. In a moment, I'm going to discharge you. You are free to go back to the
19 deliberation room. I understand lunch has -- has just arrived. You are free to have
20 your lunch. You are free to sit for a while and -- and eat and talk. I invite the
21 attorneys to go back and chat with you. You're free to talk to them about anything
22 that has to do with the case or the issues in the case or the -- the events in the trial.
23 However, you are not required to do so.

24 If any person persists in discussing this case after you've
25 indicated you do not wish to talk to the case -- or after you've raised an objection to

1 your speaking about the case or about how you deliberated or how you voted, you
2 may report that directly to me.

3 The jury is now excused with the thanks of the court and counsel.
4 And, again, in a few minutes the attorneys will be back to chat with you and feel
5 free to talk to them about anything you want.

6 Unfortunately, I -- I am not going to go back and talk to you,
7 because there are going to be possibly some other events in this trial as -- as we
8 move forward, and I have -- I am also the one who may be called upon to sentence
9 the defendant at a particular point in time, and so I think it's appropriate for me to
10 distance myself from the jurors and any of your comments at this time.

11 Thank you very much.

12 Marshal, you may -- just -- the jurors. And I hereby discharge
13 and allowed -- and they are free to -- to go wherever they want. All right.

14 Thank you.

15 [Jury dismissed at 11:54 a.m.]

16 THE COURT: Okay. We're outside the presence of the jury. I suspect
17 that there might be some, you know, post-verdict motions. I prefer to have those in
18 writing.

19 MR. WESTBROOK: That's fine, Your Honor.

20 THE COURT: But if anybody wants to put anything on the record,
21 they're free to do so now.

22 MR. WESTBROOK: Just a factual record. Obviously, Your Honor, we
23 already made our record regarding the *Allen* charge being inappropriate yesterday.
24 I won't repeat that.

25 I just wanted to note for the record that Juror LaCroix, who is

1 very, very -- I'm sure Mr. Hamner knows his stats, because he's a hockey fan. But
2 he is the over 6-foot-tall, over 300-pound juror, who was sitting on the end. And
3 he -- we all noticed this yesterday, was visibly angry, both in his body language and
4 also vocally when he left the room yesterday, as was the person who turns out to
5 have been the foreperson, Ms. Gonzales. She was less demonstrative.

6 But on the way out, they were loudly talking back and forth
7 angrily about the fact that there was one juror who -- who wouldn't get on board
8 with the guilty verdicts.

9 THE COURT: I didn't observe any of that.

10 MR. WESTBROOK: Well, Mr. Hamner and Ms. Kollins talked about it
11 once we got out of court, as well.

12 THE COURT: Okay. Well, that's fine.

13 MR. WESTBROOK: So we can certainly stipulate to it. But he was
14 visibly angry. And they were audible out that door, as the jury was filing out.
15 Obviously, with the jury deliberating, I couldn't make a record at that point. You
16 know, we didn't know if it would have any effect.

17 Now, we -- I believe that we do have that information, and I
18 wanted to make just an evidentiary record, because I know that the JAVS is not
19 pointed at the jury, as to how, first of all, huge he is, and second of all how
20 demonstrably angry he was yesterday.

21 THE COURT: If I observed anything, and I watch my jury pretty
22 carefully, I would have put something on the record.

23 But you're free to make whatever record you want. And -- and
24 we can all listen to the JAVS and see if we heard anything.

25 MR. WESTBROOK: Okay.

1 THE COURT: But if Mr. --

2 MR. WESTBROOK: And -- and honestly, Your Honor, when we talked
3 about it with the State on the way out, too.

4 THE COURT: Let him finish first.

5 Okay. Well, that's fine. Well, let's hear from Mr. Hamner on
6 that --

7 MR. WESTBROOK: Go ahead.

8 THE COURT: -- at the appropriate time.

9 MR. WESTBROOK: He can -- Mr. Hamner can talk about that.

10 The only other thing I had was probably a stupid question. I just
11 had a note that I -- I was going through my notes, and I had written this down, and
12 I'm not even sure why. This is probably a dumb question.

13 There was a point when you ordered doughnuts for the jury, and
14 then I wrote a question about it. Obviously -- I know the answer to this, too -- the
15 court didn't actually eat the doughnuts with the jury, right?

16 THE COURT: No, of course, not.

17 MR. WESTBROOK: Yeah.

18 THE COURT: I avoid all contact with the jury.

19 MR. WESTBROOK: I'm sure you didn't. I don't even know why I wrote
20 it down.

21 THE COURT: I -- I don't mind you asking the question. I avoid all
22 contact with the jury.

23 In fact, my marshal doesn't even talk to the jury. He just would
24 have presented the jurors with the doughnuts and -- and directed them back to the
25 room. Everything that --

1 MR. WESTBROOK: Yeah. I'm sure that's what happened. I don't
2 even know why I wrote it down. I think it was something that was phrased, and so I
3 wrote a note to myself and I forgot about it for two weeks.

4 THE COURT: Yeah.

5 MR. WESTBROOK: So I just wanted to bring that up.

6 THE COURT: But I don't think it was doughnuts. I think it was bagels,
7 by the way.

8 MR. WESTBROOK: Ah, bagels.

9 THE COURT: I don't think we got them doughnuts, I --

10 MR. WESTBROOK: Well, at least that's more nutritious, slightly.

11 THE COURT: Okay.

12 MR. WESTBROOK: Thank you, Your Honor.

13 THE COURT: Anything else?

14 MR. WESTBROOK: Just one more thing. We wanted to make sure we
15 got copies of the -- of the JAVS for the whole trial.

16 THE COURT: Of course, yes.

17 MR. WESTBROOK: Obviously, it's not important now, but particularly
18 for jury selection, it is important for our record.

19 THE COURT: Of course.

20 MR. WESTBROOK: And that's about it. Thanks.

21 THE COURT: Mr. Hamner, did you want to respond to --

22 MR. HAMNER: I -- I do.

23 THE COURT: And did I -- did I miss some -- some of the jurors --

24 MR. HAMNER: I think -- I think Mr. Westbrook's characterization of
25 things is inaccurate. What I saw were -- were the following: When the court

1 instructed about redeliberating, and I think Mr. LaCroix didn't appear -- appeared
2 frustrated. I -- he -- at -- I at no point heard him yelling or audibly saying anything
3 that I could make out. I don't know what the frustration is. I don't know if he was
4 potentially the one juror or if he's the juror that was frustrated because he was
5 frustrated at someone else. I think that's just rampant speculation. There's nothing
6 audible that was made out.

7 THE COURT: But he did appear frustrated at something?

8 MR. HAMNER: I think he appeared frustrated. But I don't think that
9 that's sometimes unusual sometimes for jurors sometimes to be frustrated.

10 THE COURT: What about -- he also mentioned the foreman,
11 Ms. Gonzales. Did she also --

12 MR. HAMNER: I didn't see --

13 THE COURT: -- seem frustrated?

14 MR. HAMNER: I -- I didn't -- that I didn't see.

15 THE COURT: Okay.

16 MR. HAMNER: I mean, I did notice a little bit of LaCroix, just being a
17 little bit frustrated about having to go back in. But, I mean, listen, I -- I think what is
18 important as far as the timeframe of all of this, the jury comes in around 10:00.
19 They've got a question at 3:00 and they're asked to come back and -- and
20 deliberate on a 39-count case at around 4:30. I mean, at that point, what are we
21 talking about, five, six hours. They had lunch.

22 And -- and I'd say for the record what happened is they come
23 back at 9:00, and it's what time right now? Almost noon. That's another three
24 hours. At no point in the three hours did the court receive any notes from the jury
25 about difficulties or badgering or problems with a particular juror.

1 And I think that's important for this record, because the
2 insinuation, of course, is that LaCroix, because of his "big size," being an NHL
3 player, somehow intimidated a holdout. And the assumption, of course, is that he
4 wasn't even the person holding out. And we don't know the answers to any of that.

5 But I think the bottom line is approximately nine hours of
6 deliberation with lunch and one note, I -- I don't think that this is a situation where
7 they deliberated for some unduly long period of time, and I don't think there's really
8 any evidence of badgering. That would be pure speculation on behalf of the
9 defense.

10 THE COURT: And it was about 11:20 or so, when they indicated they
11 had a verdict.

12 MR. HAMNER: Okay.

13 THE COURT: So it took some time for them to get the parties and the
14 defendant here.

15 MR. HAMNER: Well, another -- another two and a half hours of
16 deliberating with no notes of complaining or frustration about --

17 THE COURT: Okay.

18 MR. HAMNER: -- what was going on in deliberation.

19 THE COURT: Well, I don't want to comment on it. I -- you know, I -- I
20 didn't notice any particular juror acting any more or less frustrated by anybody else.
21 But it's possible it happened and I just dismissed it. So I'll just let your -- your guys'
22 memory speak for itself.

23 MR. WESTBROOK: And one of the things I've got to say is that our
24 conversation with Ms. Kollins and Mr. Hamner outside the courtroom, literally, these
25 words were spoken, Wow, he's pissed. Referring to Mr. LaCroix.

1 MR. HAMNER: He seemed frustrated, like I said.

2 MR. WESTBROOK: And -- Wow, he's pissed, was the exact words.

3 And then a very long dissertation about the Colorado avalanche by Mr. Hamner.

4 MR. HAMNER: Which I think is important to put on the record.

5 THE COURT: All right.

6 MR. WESTBROOK: I was very well informed by -- about that.

7 THE COURT: Anything else you guys filed --

8 MR. WESTBROOK: That's it, Judge. Thank you.

9 THE COURT: -- written motion, if you could.

10 MR. HAMNER: No, Your Honor. And -- and I don't --

11 THE COURT: In accordance with whatever law applies to whatever

12 type of motion you're filing. All right.

13 MR. HAMNER: Thank you, Your Honor.

14 THE COURT: I invite you guys to go back and talk to the jurors if you

15 want to. You may do that now. I'm going to not do that.

16 MR. HAMNER: A sentencing date?

17 THE COURT: We're going to set a sentencing date, Madam Clerk, for

18 in-custody sentencing.

19 THE CLERK: July 6th, 9:00.

20 MR. HAMNER: Thank you very much.

21 MR. WESTBROOK: Are you gone on that day?

22 MR. HAMNER: I actually am going to be gone. I'm out of the

23 jurisdiction. Is there any way we could do it a little bit --

24 MR. WESTBROOK: We can -- we can move it to a different day.

25 THE CLERK: We can do it --

1 THE COURT: A couple days later?
2 MR. HAMNER: I'm -- I'm going to be out of the jurisdiction from
3 June 30th to July 16th. So anytime after July 16th would be great.
4 MS. KIERNY: Or before, either one.
5 MR. HAMNER: Or before.
6 MR. WESTBROOK: Before would actually be better, if that's possible.
7 But only if it's available.
8 THE CLERK: I'm sorry. Before June what?
9 MR. HAMNER: June 30th. Yeah. Thank you.
10 THE CLERK: June 22nd, 9:00.
11 MR. HAMNER: Thank you so much.
12 MS. KIERNY: All right. Thank you.
13 MR. WESTBROOK: Thank you, Your Honor.
14 THE COURT: Court is adjourned.

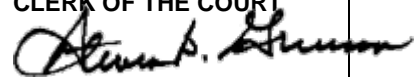
15 The defendant is remanded back into custody.

16 [Court adjourned at 12:02 p.m.]
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1 ATTEST: I do hereby certify that the foregoing is a true and correct transcript, to the
2 best of my ability, from the audio/visual recording of the proceedings in the above-
3 entitled case.

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7 Shawna Ortega, CET*562
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,) CASE #: C-17-321044-1
9)
10 Plaintiff,) DEPT. II
11)
12 vs.)
13 JOSE AZUCENA,)
14 Defendant.)

15 BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE
16 THURSDAY, JUNE 22, 2017

17 *RECORDER'S TRANSCRIPT OF PROCEEDINGS:*
18 **SENTENCING**

19 APPEARANCES:

20 For the State:

CHRISTOPHER S. HAMNER, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

CARLI L. KIERNY, ESQ.
Deputy Public Defender

22 ALSO PRESENT:

23 Spanish Interpreter

ALICIA HERRERA

24
25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 THURSDAY, JUNE 22, 2017; 9:27 A.M.

2 * * * * *

3 THE COURT: State versus Jose Azucena, C321044.

4 MR. HAMNER: Good morning, Your Honor, Christopher Hamner for the
5 State.

6 MS. KIERNY: Good morning, Your Honor, good to see you again; Carli
7 Kierny of the Public Defender's Office appearing on his behalf.

8 THE COURT: Alright, very good. So this is time set for sentencing, and I
9 think we have some victim speakers, right?

10 MS. KIERNY: Your Honor, before we go forward to sentencing there was
11 an error that I noted in the PSI because -- oh, I'm sorry? Okay. Pursuant to
12 Stockmeier I believe I have to bring it up or else it is waived at that point --

13 THE COURT: Yea, sure. Tell me about it.

14 MS. KIERNY: -- and this is a document that's going to go with him to the
15 prison.

16 On the top of Page 5 regarding the voluntary manslaughter
17 conviction with eighteen years for prison there was no enhancement, there was
18 not, as you see, it says with prior felony conviction as well, that he did not
19 have any felonies at that point. The State --

20 THE COURT: You know what, I had that question because I was looking
21 at it and these were only misdemeanors that proceeded that so I was
22 wondering why that was there.

23 MS. KIERNY: And the State also provided me the judgments of
24 conviction for that and that is not, in present, in the judgment of conviction. So
25 I believe that P&P has that wrong.

1 THE COURT: So, what should we do about this?

2 MS. KIERNY: I think that P&P needs to delete that line or provide us
3 some verification of where they got it from because this is a situation where
4 this PSI is going to follow him to the Nevada Department of Corrections and
5 could have an effect on his classification.

6 MR. HAMNER: And I don't have any objections to sending it back. I
7 vaguely remember when reviewing them, and I have a big stack of them. I
8 thought I saw at some point in that big balloon of the stack of kind of priors and
9 JOCs something that said with prior convictions on there and it may have been
10 associated with the manslaughter. It may have been at the time when he took
11 a deal for the prisoner with the weapons charge and they made kind of a new
12 JOC because it kind of tacked onto the manslaughter. I thought I may have
13 seen it written in there but I get it when I saw that some of these things were
14 dropped down to misdemeanors, like the arson for example, which I had
15 previously thought was a felony.

16 I don't have any objection to it. They let us know yesterday
17 afternoon. I had called off my victim speakers anticipating that we would be
18 sending this back.

19 THE COURT: It doesn't look like they made a difference in their
20 sentencing recommendation. They ran a lot of things concurrent, you can see.

21 MS. KIERNY: I understand that, Your Honor.

22 THE COURT: But you're worried about it following him in the future in
23 some manner?

24 MS. KIERNY: In Nevada Department of Corrections regarding his
25 classification. This is just a document that they use for every purpose.

1 THE COURT: Okay, alright. So, how much time do we need to give P&P
2 to revise this report?

3 MS. KIERNY: I would say minimum thirty days.

4 THE COURT: Okay.

5 MS. KIERNY: Sometimes up to sixty is what it's taken in the past but it's
6 up to you within that range.

7 MR. HAMNER: I'm sure thirty days is fine considering it's a pretty limited
8 issue. I'm just gonna be out of the jurisdiction up until July 16th so I was just
9 gonna ask for anything after that. So, thirty days is fine with the State.

10 THE COURT: So, like the 22nd, July 22nd. Let's do after -- let's do some
11 time around, we could do the 25th or the 27th.

12 MS. KIERNY: Either one works for me.

13 THE COURT: Okay. And did you explain all this to Mr. Azucena?

14 MS. KIERNY: I did.

15 THE COURT: Okay, very good. So we'll continue sentencing to -- any
16 preference by your victim speakers?

17 MR. HAMNER: We don't have a preference. I know for a fact I'm going
18 to be in a trial in Department 22, Susan Johnson, that starts July 26th, I want
19 to say.

20 THE COURT: That's a Wednesday.

21 MR. HAMNER: Well, then it's the beginning of that week. My only fear
22 is I know Susan Johnson has a number of full days and the one thing I don't
23 want to do is I don't want to be unavailable for this sentencing given the
24 gravity of the case. I'd respectfully request the following week. I know I have
25 a trial going in Judge Leavitt's courtroom but I know that she's got criminal

1 calendar on certain days where those mornings I could appear on --

2 THE COURT: So August 1st or the 3rd, Ms. Kierny?

3 MS. KIERNY: That next week I am in a firm-set trial. It's about a seven-
4 year-old trial and it's a retrial that Judge Villani will not let us --

5 THE COURT: How long will that go?

6 MS. KIERNY: It took about two and a half weeks last time so I'd imagine
7 maybe two.

8 THE COURT: Oh, no.

9 MS. KIERNY: So, starting the 31st is actually when it starts.

10 THE COURT: So, that pushes us to August 15th or 17th.

11 MR. HAMNER: I don't have an objection to that. I mean, Mr. Azucena's
12 he's got another case that we just bound up; he picked up new charges. That's
13 in the PSI. We just had the prelim this week on new felonies so, it's not like
14 he's going anywhere. So, I would respectfully ask if we could just have it on a
15 week where the two us are not in trial given how many felonies we have in this
16 case, how many victim speakers we have.

17 THE COURT: If she starts her trial on the 31st and it goes two and a half
18 weeks she'll be getting out right before the 17th. So, we could do it August
19 17th.

20 MS. KIERNY: Okay.

21 MR. HAMNER: That's fine.

22 THE COURT: Alright?

23 MR. HAMNER: No problem, thank you so much, Your Honor.

24 MS. KIERNY: Thanks.

25 THE COURT CLERK: The 17th at 9 a.m.

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MS. KIERNY: Perfect.

THE COURT: Alright, and it looks like there's not a lot of discretion I have on the sentence other than concurrent or consecutive.

MR. HAMNER: That would be correct.

MS. KIERNY: Yea, that's correct, Your Honor.

MR. HAMNER: Thank you so much, Your Honor.

MS. KIERNY: Thanks.

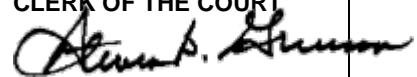
THE COURT: Alright, thank you.

[Proceedings concluded, 9:32 A.M.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


DALYNE EASLEY
Court Recorder



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
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8 THE STATE OF NEVADA,) CASE #: C-17-321044-1
9)
10 Plaintiff,) DEPT. II
11)
12 vs.)
13 JOSE AZUCENA,)
14 Defendant.)

15 BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE
16 THURSDAY, AUGUST 17, 2017

17 *RECORDER'S TRANSCRIPT OF PROCEEDINGS:*
SENTENCING

18 APPEARANCES:

19 For the State:

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

20
21 For the Defendant:

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

22 ALSO PRESENT:

23 Spanish Interpreters

MARIA PERALTA DE GOMEZ
IRMA SANCHEZ-GASTELUM

24
25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

1 THURSDAY, AUGUST 17, 2017; 9:39 A.M.

2 * * * * *

3 THE COURT: The State of Nevada versus Jose Azucena, C321044.
4 Who do we got here? We got the whole crew.

5 MR. HAMNER: Whole gang.

6 MS. KIERNY: Good morning, Your Honor. Carli Kierny of the Public
7 Defender's Office along with David Westbrook, the Public Defender's Office
8 appearing on behalf of Mr. Azucena.

9 THE COURT: Alright, Counsel, this is time set for sentencing. I received
10 a notice from the DA that they have a witness, the victim's father, Nicolas
11 Estrella, to speak today. Did you receive a copy of that?

12 MS. KIERNY: I did.

13 THE COURT: And I have the original PSI and then there was the
14 amended PSI, Supplemental PSI, June 2, 2017.

15 MS. KIERNY: I have that as well and there's no further amendments to
16 that.

17 THE COURT: Mr. Hamner, are we ready to proceed?

18 MR. HAMNER: We are, just with one caveat. Our notification of an oral
19 statement that was sent on June 22nd noted Amanda Moiza, Ricardo Rangel,
20 Maria Estrella Barajas and Nicolas Estrella and that is the parents of the each
21 sets of children. So, it's more than just one speaker here, Your Honor.

22 THE COURT: Oh, you had the prior notice.

23 MR. HAMNER: That's correct. And Ms. Moiza, Mr. Rangel, Ms. Estrella
24 Barajas and Mr. Estrella are all here today so we'll ask that they speak last
25 pursuant to statute.

1 THE COURT: Very good. Let's hear from you first.

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

3 I've reviewed the supplemental PSI and from an aggregate
4 perspective they're recommending eighty-six years to life. That was my read of
5 what happened and that's their recommendation. The State thinks that that's
6 appropriate but to be perfectly honest, given the gravity of what this man has
7 done in this case as well as throughout his entire life, I don't think it would be
8 out of the ordinary to run everything consecutive.

9 What the Defendant did in this case was absolutely egregious. This
10 man was a best friend, a family friend to these three families, well, particularly
11 two families living in this apartment complex. He used their trust to get close
12 to these parents. He knew these children. He was around before they were
13 even born. And what he proceeded to do was use that trust to sexually abuse
14 and molest them.

15 And these were children: seven-years-old, eight-years-old; young,
16 children. There were five of them and he would lure them with candy. He
17 would rub it on his genitalia and ask them to eat it. He would put his hands all
18 over their bodies; their vaginas, their chest. He even kidnapped one of them in
19 which he grabbed her and took her into her bedroom [sic], duct taped her
20 mouth, duct taped her arms and legs and then sexually assaults her. And what
21 he did with all these children is in order to ensure silence he threatened to kill their
22 parents.

23 Now sometimes a lot of cases that seems like hyperbole but when
24 you actually look at his record the Defendant's already been convicted of
25 manslaughter. So, this is a man who's actually taken life before. He's

1 terrifying.

2 And when you look at his history: he comes to this country, he
3 commits arson, he's deported, he comes back over the border. He then
4 commits a murder, goes to trial, gets a manslaughter conviction, does eighteen
5 years. While in prison he's convicted or arrested for prisoner with a weapon.
6 So even in a confined penitentiary he's still committing felonies. And then he's
7 deported again after doing twenty years. He comes to Las Vegas and then
8 does this to these innocent children. It kind of boggles the mind.

9 And what's amazing about this case is after the verdict comes
10 down where he's found guilty on thirty-plus counts of doing all this sexual
11 abuse to these kids, what does he do in CCD? He attacks two of his fellow
12 inmates. He is currently pending trial on two counts of battery with a deadly
13 weapon. No one is safe from Jose Azucena. It doesn't matter if you're a kid or
14 an adult.

15 And the State is simply asking that either just follow -- listen, he's
16 in his sixties, we get it. I know a minimum of thirty-five years to life is
17 essentially a death sentence for him. But the concern from the State is and I
18 think it's recognized in this is that he needs to be -- we need to make sure he
19 stays there forever; that he never gets out because it's very clear that this is his
20 life is just basically hurting others.

21 And, I think the eighty-five years at least, why it's important is for
22 this, for this message: every one of these children deserves to have the sexual
23 abuse that they were subjected to at his hand, recognized. Running it all
24 concurrent just says hey, it doesn't matter if it's one child or six or ten. That's
25 the importance of an eighty-five to year life sentence because it respects and it

1 recognizes each individual child's pain. And I won't get into all that, I'm gonna
2 leave that to their parents but with that we're asking to follow the
3 recommendation. Eighty-six years to life we think is more than appropriate.

4 With that, the State will submit.

5 THE COURT: Thank you. Ms. Kierny or Mr. Westbrook, would you like
6 your client to speak first or do you want to go first?

7 MS. KIERNY: I think he has something to say but I'm gonna speak first
8 and be very brief.

9 I understand what Mr. Hamner's saying but it's all a purely
10 academic argument; maybe for the cameras here, I don't know. At any rate, he
11 only has one life. Thirty-five years to life is the statutory scheme on this case.
12 If I could ask for anything that I think would get him a meaningful opportunity
13 at parole I would. I would fight tooth and nail for it because that's what I've
14 done in this trial. But I think at this point most of our arguments are for the
15 appellate court.

16 So, I'm going to submit to you, Your Honor, to give the lowest
17 appropriate sentence. Thank you, Your Honor.

18 THE COURT: Thank you. Mr. Azucena, you have an opportunity to
19 address this Court regarding your sentence, anything towards leniency or
20 mitigation.

21 THE DEFENDANT: Yes.

22 THE COURT: Would you like to say anything, sir?

23 THE DEFENDANT: What I want to say is, in this trial there's no
24 testimony from me. And there are three people involved in this crime. And the
25 girls, they know their names and where they live.

They came to my house to put in the complaint against me about those [indiscernible]. I went to where their mother lives to convey that complaint but she didn't want to accept it.

So I would like this case to be investigated further because they came to my house knocking on the door to complain about those people.

THE COURT: Alright, thank you. Anything else?

THE DEFENDANT: That's it. I need to testify. And I need a statement taken from the girls because the trial that I went through, everything was fake.

THE COURT: Alright, thank you, sir. Let's hear from the victim speakers, Mr. Hamner.

MR. HAMNER: The State's gonna call Amanda Moiza to stand first.

THE COURT: Amanda Moiza, would you please come forward? That's M-O-I-Z-A. You can stand there next to the District Attorney. I'm gonna put you under oath so please raise your right hand.

AMANDA MOIZA

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

THE COURT CLERK: Please state and spell your first and last name for the record.

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

THE COURT: Alright, thank you. You may address the Court.

THE SPEAKER: I want to tell you about the damage that this man has done to my family. Since this incident happened we're not the same. We do not trust anybody, we're always worried, we don't rest in thinking why did he do this. They're just children and he stole away their childhood and their

1 innocence.

2 That event opened the door to many people, good and bad that
3 they want to know what happened. But it hurts because they're my children.
4 It's something that you never think it's going to happen to you but it did
5 happen. We had trusted him too much because we thought he was part of the
6 family.

7 I want him to spend a lot of time because a person like that does
8 not deserve to be outside. So that he doesn't hurt any other girls like he did
9 with mine.

10 THE COURT: Alright, thank you very much for coming forward for your
11 statement. You may go back and sit down.

12 THE SPEAKER: Thank you.

13 THE COURT: Thank you. Alright, you may call the next speaker.

14 MR. HAMNER: State will call Ricardo Rangel.

15 THE COURT: Ricardo Rangel.

16 Please raise your right hand to be sworn.

17 **RICARDO RANGEL**

18 [having been called as a witness by the State and being first duly sworn,
19 testified as follows:]

20 THE COURT CLERK: Please state and spell your first and last name for
21 the record.

22 THE SPEAKER: My name is Ricardo Rangel. It's R-I-C-A-R-D-O. The last
23 name is R-A-N-G-E-L.

24 THE COURT: Alright, thank you, Mr. Rangel. You may address the
25 Court.

1 THE SPEAKER: The damage that this person caused me, I go to a lot of
2 places and I see his face in every moment. I don't know what there's people
3 like this, like this person, he hurt my child and he hurt me. In a way that I was
4 a very calm person and nothing affected me. What happened to me what I was
5 told.

6 So this time what I'm doing is I'm just keeping an eye on them,
7 making sure that they are safe all the time. You know, sometimes children
8 don't understand and all I do is call her attention trying to protect her and
9 before she used to go out, go to houses and play.

10 So, it's not the same anymore. I cannot be apart from her 'cause I
11 always have to be making sure that she's safe and wondering if something's
12 happening to her, if something's alright or not. And when that would happen is
13 that my daughter does not trust any man. She doesn't even trust any family
14 member, my brother. She's always -- and she doesn't trust anybody. She's
15 always thinking that they're going to hurt her. Any man.

16 THE COURT: Anything else, sir?

17 THE SPEAKER: That's all.

18 THE COURT: Thank you very much, Mr. Rangel, for coming forward and
19 for providing your statement. You may go back and sit down.

20 Mr. Hamner, you may call your next speaker.

21 MR. HAMNER: Maria Barajas Estrella.

22 THE COURT: Maria Estrella Barajas, you may come forward. Please raise
23 your right hand to be sworn.

24 **MARIA ESTHER BARAJAS NAVARRO**

25 [having been called as a witness by the State and being first duly sworn,

1 testified as follows:]

2 THE COURT CLERK: Thank you. Please state and spell your first and last
3 name for the record.

4 THE SPEAKER: Maria Esther Barajas Navarro, M-A-R-I-A E-S-T-H-E-R
5 B-A-R-J-A-S [sic] N-A-V-A-R-R-O.

6 THE COURT: Alright, you may address the Court.

7 THE SPEAKER: Since the moment that that happened to my daughter, I
8 mean, it's been -- she's been very scared of everything. Like we go to the
9 supermarket and she'll start getting upset because she's afraid that the person
10 can be there. I tell her what's wrong with you, I'm scared that the man might
11 be there.

12 She's not the same and neither am I. I don't trust anybody. I
13 almost don't sleep just to be seeing the way she's doing right now. She also
14 wants to leave the state 'cause she doesn't want to see him or anything
15 because she feels that he's going to follow us and something's going to happen
16 to us. And since that moment when this happened she doesn't feel the same
17 and I don't feel the same.

18 And the thing we never thought that he would do something like
19 that. And we don't trust him anymore. And all I want is justice to be served so
20 that he's not outside hurting other girls. Not like mine.

21 THE COURT: Alright, thank you Ms. Estrella Barajas for coming forward
22 and making your statement. You may go sit down.

23 Alright, the State may call its next speaker.

24 MR. HAMNER: It'll be a final speaker, Your Honor, Nicolas Estrella.

25 THE COURT: Nicolas Estrella, please.

NICOLAS ESTRELLA

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

THE COURT CLERK: Thank you. Please state and spell your first and last name for the record.

THE SPEAKER: Nicolas Estrella, N-I-C-O-L-A-S E-S-T-R-E-L-L-A.

THE COURT: Alright, thank you, Mr. Estrella. You may address the Court.

THE SPEAKER: Well, physically we feel a little bit bad and verbally too for what happened to us. And we want to thank the jury and the DAs because they served justice the way it should be served; and everyone that did something in this court.

That's all.

THE COURT: Alright thank you very much for your statement, sir, and you may go ahead and sit down.

Alright, so, the Court has considered the verdict of the jury, the original presentence investigation report, the supplemental investigation report, arguments of Counsel, statement of the Defendant and statements of the speakers. The Court is ready to announce sentence.

Court is generally inclined to accept the recommendation of the Department of Parole and Probation as stated in the supplemental presentence investigation report with one minor exception. The Court is in aggregate sentencing the Defendant to life imprisonment with the opportunity for parole after eight-five years. And here is how that is calculated.

The following sentences are all running consecutive. So this is for

1 the benefit of the Court Clerk. I'm finding the Defendant, first, guilty, let me go
2 ahead and say, guilty on Counts 1, 2, 9, 5 -- I'm sorry, 1, 2, 9, 15, 16, 17, 18,
3 26, 27, 29, 35, and 36 which are Counts for lewdness with a child under the
4 age of fourteen. I'm finding the Defendant guilty under Counts 3, 8, 10, 12,
5 19, 30, and 32; child abuse, neglect or endangerment.

6 I'm finding the Defendant guilty on Counts 4, 11, 20, 31 and 39;
7 indecent exposure. Finding the Defendant guilty on Counts 6, 14, 22, and 34;
8 attempt lewdness with a child under the age of fourteen.

9 I'm finding the Defendant guilty of Count 24; first degree
10 kidnapping.

11 I'm finding the Defendant guilty on Count 25; sexual assault with a
12 minor under the age under fourteen years of age.

13 And now for the benefit of the Clerk, the following Counts are to
14 run all consecutive: Count 1 is ten to life. Count 3 is consecutive with all other
15 Counts, that's three to ten years. Count 6 to run consecutive is two to ten
16 years. Count 9 to run consecutive is ten to life. Count 15 to run consecutive is
17 ten to life. Count 24 to run consecutive is five to fifteen. Count 25 to run
18 consecutive is thirty-five to life. Count 26 to run consecutive is ten to life for a
19 total consecutive sentence -- total aggregate sentence of eighty-five to life.

20 Here's the sentences for the remaining charges which are all to run
21 concurrent as follows: As to Count 2, Defendant is sentenced ten to life to run
22 concurrent with all other Counts. Count 4, indecent exposure, the gross
23 misdemeanor, the Court is sentencing the Defendant to three hundred sixty-four
24 days and that is to run concurrent with all other Counts. Counts 8, child abuse,
25 neglect or endangerment the Court sentences the Defendant to three to ten

1 years to run concurrent with all other counts. Count 10, child abuse, neglect or
2 endangerment the Court sentences the Defendant three to ten years to run
3 concurrent. Count 11, indecent exposure, a gross misdemeanor, the Court
4 sentences the Defendant to three hundred sixty-four days to run concurrent
5 with all other Counts. Count 12, child abuse, neglect or endangerment the
6 Court sentences the Defendant to three to ten years to run concurrent. Count
7 14, attempt lewdness with a child under the age of fourteen the Court
8 sentences the Defendant to two to ten years to run concurrent. I indicated
9 Count 15 already.

10 Count 16, lewdness with a child under the age of fourteen; ten to
11 life to run concurrent. Count 17, lewdness with a child under the age of
12 fourteen; ten to life to run concurrent. Count 18, lewdness with a child under
13 the age of fourteen; ten to life to run concurrent. Count 19, child abuse,
14 neglect or endangerment; three to ten years to run concurrent.

15 Count 20, indecent exposure, three hundred and sixty-four days,
16 Clark County Detention Center to run concurrent. Count 22, attempt lewdness
17 with a child under the age of fourteen; two to ten years to run concurrent. 24,
18 I indicated already. 25, I indicated already. 26, I indicated already. 27,
19 lewdness with a child under the age of fourteen; ten to life to run concurrent.
20 Count 29, lewdness with a child under age of fourteen; ten to life to run
21 concurrent.

22 Count 30, child abuse or neglect; three to ten years to run
23 concurrent. Count 31, indecent exposure; three hundred sixty-four days, Clark
24 County Detention Center to run concurrent. Count 32, child abuse, neglect or
25 endangerment; three to ten years to run concurrent. Count 34, attempt

1 lewdness with a child under the age of fourteen; two to ten years to run
2 concurrent. Count 35, lewdness with a child under the age of fourteen; ten to
3 life to run concurrent. Count 36, lewdness with a child under the age of
4 fourteen; ten to life to run concurrent. Count 39, indecent exposure; three
5 hundred sixty-four days to run concurrent. Those are all the charges.

6 Again, for the record and for the benefit of the Court Clerk I'm
7 following the recommendation of Department of Parole and Probation in all
8 respects with the limited exception, and Counsel, you'll see that I followed
9 everything that P&P said with the only exception being Count 4, indecent
10 exposure; I ran that concurrent instead of consecutive.

11 I believe I covered all the existing Counts. Any clarification needed?

12 MR. HAMNER: No, well, there's a couple of things. One is he has two-
13 hundred seventy-eight days of credit.

14 THE COURT: Yes, I'm granting credit for time served two hundred
15 seventy-eight days.

16 MR. HAMNER: Additionally, we have to still say this, upon release from
17 custody if he ever gets out he would be under an imposed term of -- he needs
18 to register as a sex offender. And also impose a term of lifetime supervision.

19 THE COURT: Yes, that's -- I need to say that for the record. You never
20 know what's going to happen but in the event that the Defendant is -- if and
21 when the Defendant is ever released he must register as a sex offender in
22 accordance with NRS 179D.460. And he must be subject to lifetime
23 supervision in accordance with NRS 213.1243 and NRS 176A.410.

24 Alright, thank you, Counsel.

25 Oh, fees: twenty-five dollar administrative assessment, three dollar

1 DNA testing fee, two hundred and fifty dollar indigent defense fund fee and one
2 hundred fifty dollar DNA testing fee.

3 MR. WESTBROOK: And Your Honor, we would waive on behalf of the
4 Public Defender's Office the two hundred fifty dollar indigent defense fee.

5 THE COURT: Alright, then that is so waived.

6 MR. WESTBROOK: Thank you.

7 THE COURT: Thank you.

8 [Proceedings concluded, 10:09 A.M.]

9 * * * * *

10 ATTEST: I do hereby certify that I have truly and correctly transcribed the
11 audio/video proceedings in the above-entitled case to the best of my ability.

12 
13 DALYNE EASLEY
14 Court Recorder
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DISTRICT COURT
CLARK COUNTY, NEVADA

DEPT. II

Defendant.

***DEFENDANT'S MOTION TO COMPEL PRODUCTION OF DISCOVERY AND
BRADY MATERIAL***

Deputy District Attorney

Deputy Public Defenders

MARIA URRUTIA PETERS

2938

1 THURSDAY, MARCH 23, 2017; 10:08 A.M.

2
3 THE COURT: Page seven, State versus Jose Azucena, C321044;
4 Defendant's motion to compel.

5 MR. WESTBROOK: Good morning, Your Honor, David Westbrook and
6 Carli Kierny on behalf of the defense.

7 THE COURT: Alright.

8 MS. KOLLINS: Good morning, Your Honor, Stacey Kollins and Mr.
9 Hamner on behalf of the DA's office.

10 MR. HAMNER: Morning, Your Honor.

11 THE COURT: Hi folks. Alright, what have you guys worked out?

12 MR. WESTBROOK: Well, what we've worked out, Your Honor, is that we
13 need discovery and *Brady* information and it's their obligation to give it to us.
14 We have met and conferred. We've gotten some discovery but, as the Court is
15 aware, this is not really about what discovery they've given us it's about us
16 having a right to certain discovery and we have a list of specific items that
17 we'd like to go through and get a granted an eye on so that we can set the
18 parameters for what discovery they need to give us.

19 THE COURT: So, you have --

20 MS. KOLLINS: Just for the record.

21 THE COURT: Yes, yes, Ms. Kollins?

22 MS. KOLLINS: We did a file review with both counsel last week and gave
23 them everything in our possession, so.

24 THE COURT: Well, so you have everything in your possession -- when
25 you say everything --

1 MS. KOLLINS: In my immediate possession in my file, not in my global
2 possession.

3 THE COURT: What about, I mean, obviously, the prosecution has to
4 produce anything in its possession, custody, control or any state investigative
5 authority that was involved in the case, alright? And so you looked to see
6 what might be in the possession, custody and control of Metro or any
7 investigators Metro signed to the case; right?

8 MS. KOLLINS: It is our belief that we are in possession of everything that
9 Metro had and we have given all of that to defense counsel.

10 THE COURT: Alright, so the only thing I need hear from the defense is is
11 what evidence do you have that the State might be holding something that they
12 haven't turned over?

13 MR. WESTBROOK: Asking us to provide evidence of a negative, Your
14 Honor, is impossible.

15 THE COURT: Yeah, but that's what --

16 MR. WESTBROOK: But I do have a question for the State.

17 THE COURT: -- the Supreme Court has said that the trial court must do in
18 order to determine if there's been a potential due process violation.

19 MR. WESTBROOK: Well, sure, but that's -- we're skipping a step though,
20 Your Honor, with all due respect.

21 THE COURT: What's the step?

22 MR. WESTBROOK: The step is we've provided a whole list of specific
23 requests.

24 THE COURT: Yeah.

25 MR. WESTBROOK: We need to have each one of those specific requests

1 either granted or denied.

2 THE COURT: Well, I don't do that.

3 MR. WESTBROOK: Whether or not they've violated it will come --

4 THE COURT: I don't do that 'cause the Supreme Court has said that
5 really the process that I need to go through is you file the motion, alright, and
6 you make out a, you know, a good faith argument that you're looking for
7 documents that are favorable or exculpatory, which a lot of your requests --

8 MR. WESTBROOK: It's not just that, Your Honor, though, it's also --

9 THE COURT: You kind of interrupted me but, go ahead, alright.

10 MR. WESTBROOK: I'm sorry, I didn't mean to interrupt Your Honor but
11 it's not just exculpatory, this is also including inculpatory, potentially inculpatory
12 evidence that's part of the discovery statute as well.

13 THE COURT: Well, and that's what I was saying, exculpatory or
14 favorable and the word favorable has been interpreted to include impeachment
15 evidence and other things. I mean, there's *Brady* and *Giglio* and their progeny.

16 So, let me just, or why don't you just finish?

17 MR. WESTBROOK: I can be -- I can directly answer your question but --

18 THE COURT: Yes, please 'cause what I generally like to hear is 'cause
19 sometimes there is evidence that -- sometimes defense counsel comes in and
20 points me to specific things that the State says that they have that they're
21 refusing to turn over and that's usually what I'm most interested in. Like, if
22 they say that they have some piece of evidence that they're not turning over,
23 they object and, you know, after your meet and confer -- and then I like to hear
24 those arguments because sometimes I overrule their objection. But what I don't
25 think I'm allowed to do is because the US Supreme Court and the Ninth Circuit

1 have made it crystal clear that I'm required to give deference to the prosecution
2 in their initial determination on whether they've turned everything over.

3 So, really I'm only allowed to look at discovery issues if there some
4 reason to believe that they have something that hasn't been turned over.

5 MR. WESTBROOK: I will give you a list for starters. Now, I disagree with
6 the contention, first of all, that we're required to guess and somehow divine
7 what they -- if they don't tell us about it then we have no way of knowing
8 about it in most circumstances so, but I will address that in a second because I
9 have plenty of responses that are directly on point with your request, which is
10 what haven't they turned over?

11 THE COURT: Perfect, yeah, perfect.

12 MR. WESTBROOK: But the first response --

13 THE COURT: And don't go too fast because we have an interpreter for
14 your client.

15 THE INTERPRETER: Thank you, your Honor.

16 MR. WESTBROOK: Thank you.

17 MS. KIERNEY: Thank you.

18 MR. WESTBROOK: The first request requires me to respond to your
19 question with a question, and that is this. Has the State met with, actually met
20 and conferred with, their detectives, their Metro officers, the people from victim
21 witness who handle U Visas, organizations from, you know, that VWAC works
22 with that handle U Visas? That's a specific request in here. Have they actually
23 met with people who would have constructive possession under *Mezzan versus*
24 *Warden and Kyles v. Whitley* of the evidence in this case?

25 THE COURT: So, a motion for discovery is not a valid tool to try to get

1 an opportunity to depose the prosecutors, alright? They've represented that
2 they have turned over all Brady material, that's their representation. So, I can't
3 grill them on what they have or haven't done to try to locate *Brady* material.

4 MR. WESTBROOK: Actually, Your Honor, what they just said was, we
5 believe that we have everything. What they did not say was --

6 THE COURT: Well, no, no, no. Let's be precise. If we're gonna try to
7 characterize what they said. She said that we believe we've turned over
8 everything in our possession, custody or control. That's relevant.

9 MR. WESTBROOK: Correct. And I'm asking for a basis for that belief
10 because if they've never met with the officers and they never met with the
11 VWAC then they're guessing that they've turned everything over and they have
12 no way to know.

13 THE COURT: But there's no statute or case law that allows you to come
14 in and make that request.

15 MR. WESTBROOK: There is and I recorded them in my brief. I mean I
16 can go through the brief again but it's all in here.

17 THE COURT: No, I read the brief. I read the brief.

18 MR. WESTBROOK: Well, they have to meet and confer, Your Honor,
19 otherwise what they're representing in court has no meaning.

20 I'll tell you exactly why I'm so ornery about this.

21 THE COURT: Okay.

22 MR. WESTBROOK: I was in a case --

23 MS. KOLLINS: Oh no, here we go.

24 THE COURT: What if they -- what has the State, let me just share. What
25 do you believe the State has done that violates *Brady*? I mean, 'cause you

1 can't just -- there is no general right of discovery in criminal cases, we know
2 that. There's a statutory right of discovery under 174, alright? If you believe
3 they've not honored their obligation you come in and you have to present some
4 evidence. You can't just file a motion saying I want all these things with no
5 evidence that the State has not done something that they're required to do.

6 MR. WESTBROOK: Your Honor, if they had not --

7 THE COURT: If that's the case, how is that different from civil discovery?

8 MR. WESTBROOK: Well, they have lots of differences from civil
9 discovery and I wish we had civil discovery 'cause then I could do all of the
10 things you're talking about.

11 THE COURT: So, what is it the State has not done?

12 MR. WESTBROOK: I don't think that they've met with everybody who's
13 relevant from whom they could get evidence. If they have not --

14 THE COURT: Well, so let me ask Ms. Kollins or Mr. Hamner. Have you --
15 do you believe you satisfied your -- are you willing to go on the record that
16 you've satisfied your *Brady* obligations?

17 MS. KOLLINS: We have been in communication with our detective. We
18 can go physically look at a file, we have not done that.

19 THE COURT: Are you aware of --

20 MS. KOLLINS: But I have gone through everything that's on OnBase,
21 we've gone through that. We have turned everything that is in Metro's
22 electronic file over. I mean, if you're directing me to go speak in the presence
23 of Detective Campbell, no, I haven't done that.

24 THE COURT: I didn't direct you to do anything.

25 MS. KOLLINS: Well --

1 THE COURT: I'm simply asking what have you done so far?

2 MS. KOLLINS: Well, it's a little hard not to get defensive with Mr.
3 Westbrook's tone this morning.

4 THE COURT: Okay. Alright but don't get defensive with me, I'm trying
5 to just get to the facts here.

6 MS. KOLLINS: We reached out to both of them, had them come over and
7 review the file. We have turned over the statements of the five children in this
8 case. We have turned over -- one thing I do know that we don't have in our
9 possession is certified copies of his manslaughter conviction and his prisoner
10 with a weapon conviction, those are on order. We haven't turned those over.

11 As far as his complaints about U Visas and things like that we don't
12 have any of that information.

13 THE COURT: Yeah, I read that. I understand that. Alright, so, in light of
14 her position, what is it that you believe they have that they haven't turned
15 over?

16 MR. WESTBROOK: Your Honor, do you know the monkeys, the statue of
17 the three monkeys; see no evil, hear no evil, speak no evil?

18 THE COURT: Yes.

19 MR. WESTBROOK: Okay.

20 THE COURT: I do.

21 MR. WESTBROOK: They haven't talked to VWAC therefore, they don't
22 have information regarding whether or not people in this case who are testifying
23 have received benefits such as U Visas or applications for U Visas. If they
24 haven't talked to state actors who are working in conjunction with this case
25 they cannot validly represent in court that they have provided everything to us.

1 They have not had those meetings. When we were in their office they said
2 they had not met with Detective Campbell.

3 THE COURT: So, then how does the State -- how do you know if there's
4 been any promises of benefits to any of the witnesses if you haven't talked to
5 the important people?

6 MS. KOLLINS: Well, I do know that they've all been given referrals for
7 counseling, which is standard, and Mr. Westbrook knows that. They've been
8 paid their statutory witness fees, Mr. Westbrook knows that. So, if he's
9 looking -- I don't have any information on U Visas right now. I can --

10 THE COURT: Okay. Is that a state actor that would be involved in that?

11 MS. KOLLINS: That would be federal.

12 THE COURT: That'd be federal. It's not a state actor?

13 MS. KOLLINS: That's correct.

14 MR. WESTBROOK: And, Your Honor I --

15 THE COURT: It's not a state actor.

16 MR. WESTBROOK: I can explain why it is a state actor.

17 THE COURT: Okay, well, explain.

18 MR. WESTBROOK: This is how it works. About eighty percent of the
19 actual U Visas in this state or at least in our county are processed by an outfit
20 called Hermandad Mexicana, right?

21 MS. KIERNEY: Yeah.

22 MR. WESTBROOK: Good, I'm terrible and don't speak any other
23 languages.

24 So, this is how that relationship works. They get the vast majority
25 of their referrals directly from either VWAC or Metro. VWAC, of course, is part

1 of the District Attorney's office. Metro is part of the police department and
2 therefore part of the state.

3 THE COURT: Okay.

4 MR. WESTBROOK: Those people are referred directly by state agencies
5 to an agency that works very closely with Metro that processes these
6 applications by getting referrals from Metro and VWAC and who are largely
7 state funded through a stop grant. They are also state actors but there's no
8 question whatsoever that VWAC and Metro are state actors.

9 If any witness in this case has been directed to file a U Visa
10 paperwork with this organization or with any organization or even just direct file
11 with the federal government a state actor has been involved. Therefore, this
12 information is in the possession, constructively, of the District Attorney's office
13 and of the State of Nevada. This is not just a federal situation these
14 applications are started by state actors and processed by state actors. And
15 they've never talked to anybody about it so they don't know whether it's here
16 or not.

17 THE COURT: Okay. So, you see what you just done there though? I
18 mean that's addressing my question of what is a specific piece of evidence that
19 you think might be in their possession, custody or control that they haven't
20 produced. And you're saying U Visa information and they're taking the position
21 that it's not in their possession, it's in someone else's possession. That raises
22 a legitimate issue on is it in the possession of a state actor or non-state actor?
23 See, that's the specific type of issue that can come before me; alright? And so,
24 do you have any others?

25 MR. WESTBROOK: Well, first of all let me start by saying --

1 THE COURT: Not first of all because we're almost done. I'm giving you
2 just a couple of minutes.

3 MR. WESTBROOK: No, I have lots still. I have so many. So,

4 THE COURT: Okay, we'll we're way past first.

5 MR. WESTBROOK: Hopefully we're not but I want to -- the reason why I
6 say first of all.

7 THE COURT: Okay.

8 MR. WESTBROOK: I want you to recall that at the onset they said
9 everything was turned over. Okay? I believe everything in our possession has
10 been turned over and you question the but constructive possession and they
11 said everything's been turned over. We've now found out they have not met
12 with actual detectives so they don't know whether everything's been turned
13 over. They said that they looked at the computer program but they have not
14 actually had a meeting and looked through a detective's file. And there's
15 arguments about whether or not detectives keep paper files anymore and in my
16 experience they do.

17 I don't believe we've received any detective notes in this case for
18 example. That can't be determined whether they exist or not without actually
19 meeting with a detective, they haven't done that.

20 They said that everything's been turned over and now we know
21 they haven't talked to victim witness. They said that we know that witnesses
22 have been paid and I guess systemically we know that but we haven't received
23 a single piece of paper to prove any of that. We've heard that they've been
24 referred to counseling, there are referral sheets when someone's referred to
25 counseling; we've seen none of that.

1 And, again, I'm bringing you back to what they started by saying is
2 that we've gotten everything. Already we know that's not accurate and I think
3 it should undercut the credibility of further statements that we have everything.

4 Furthermore, it underscores my problem with the procedure thus far
5 which is that we have made numerous specific requests. We have a right, due
6 process right, to have them granted or denied. They can't simply be summarily
7 dismissed and not considered.

8 These help keep mistakes like this from happening. It will also
9 shorten the argument today to actually have a grant or deny on each one of
10 these things.

11 THE COURT: Anything else?

12 MR. WESTBROOK: I swear, it will shorten them.

13 THE COURT: Okay. Let me hear from the State. Ms. Kollins, let's go
14 back through just a couple of these since he raised specific points.

15 Referral sheets, when you refer people to counseling are there
16 normally referral sheets and would that be a *Brady* document? What's your
17 position on that?

18 MS. KOLLINS: We will get them the referral sheets.

19 THE COURT: You'll get them?

20 MS. KOLLINS: Yes.

21 THE COURT: Okay, great. So that will be turned over.

22 MS. KOLLINS: Basically, what it does is it gives the victim access two
23 thousand -- between a thousand and two thousand dollars for counseling.

24 THE COURT: Perfect.

25 MS. KOLLINS: So, it would be done in this case.

1 THE COURT: He said you haven't talked to victim witness and so you
2 don't know if they have any *Brady* material. What's your position on that?

3 MS. KOLLINS: They will have a record of the witness fees that have
4 been paid in this case and I certainly will give that to Mr. Westbrook as he
5 believes that was an inducement for disclosure.

6 THE COURT: What about you haven't actually spoken to the detective to
7 determine what *Brady* material they have. What have you done to determine
8 whether detectives have *Brady* material?

9 MS. KOLLINS: I'm going to give that to Mr. Hamner because he's been in
10 communication with them.

11 THE COURT: Oh, yes, sir, thank you.

12 MR. HAMNER: Yeah, I've had extensive discussions with Detective
13 Campbell. And I expressed that to Mr. Westbrook and Ms. Kierney in our
14 meeting. What they were looking for is they said well, have you had a physical,
15 sit-down meeting with him, face to face and the answer is I've met him in
16 person when he was testifying but no, we haven't read the file but I've made
17 repeated requests that we want everything in his file. That's all been turned
18 over to us pursuant to Detective Campbell. We've reviewed electronically
19 OnBase. We pulled everything and all those things have been provided to them.

20 We even explained to the defense we don't even think it's very
21 likely that this particular detective, Detective Campbell, based on our work
22 experience, even keeps notes on this stuff. We'll double check one more time
23 and see if he actually has notes but we don't believe he does.

24 But the idea that we haven't met with Detective Campbell, I think,
25 is somewhat false because I've had repeated phone conversations, telephone

1 meetings --

2 THE COURT: Alright, I want to move off that. U Visas; you both take
3 different positions on whether that material is in your possession, custody or
4 control or possession, custody or control of a state actor.

5 MR. HAMNER: I would note a couple of things. Also with respect to
6 *Brady*, they haven't demonstrated a second prong of *Brady* that somehow they
7 would be incapable of subpoenaing those things for themselves. They've
8 identified an organization that they believe would have records, potentially, of
9 these people having filed U Visas. They haven't filed any subpoenas to try to
10 get it. They've made no demonstration under the second prong of *Brady* that it
11 would be difficult or not, reasonable for them to acquire it on their own. And
12 they haven't made that showing and they need to under *Brady*. And that's just
13 simply the law.

14 THE COURT: But I've had the U Visa argument several times before.
15 You might have been involved in some of them. I just wanted to hear if there
16 was any new twist to this.

17 Last word from defense counsel.

18 MR. WESTBROOK: On U Visas? Because I have a lot of last words on
19 other things, Your Honor. But regarding U Visas, they're all state actors. The
20 State is in constructive possession of the information. They must turn it over
21 both under the statute and under *Brady*, and *Kyles v. Whitley*, and *Mezzan*
22 *versus Warden*.

23 THE COURT: Alright. Here's what I'm gonna do. I'm not gonna take
24 any more time on this I know you have a lot more you want to say. I'm
25 denying your motion in part, granting it in part as to all items. I'm denying it as

1 to all items with exception of you're gonna get the referral sheets and you're
2 also going to get record of any witness fees paid.

3 I'm denying your motion without prejudice. If you come into
4 possession of any evidence that you believe supports an argument that the
5 State has in its possession, custody or control other material that is -- that
6 they're under an obligation to turn over under *Brady* then you can refile. So,
7 this is without prejudice.

8 MR. WESTBROOK: I've got one right now, Your Honor. Witness tips.
9 None have been turned over. We know there were phone calls.

10 THE COURT: Say what?

11 MR. WESTBROOK: Witness tips. There was a tip line, this was a media
12 case, there was a media tip line. This has all been reviewed and been in the
13 possession of the police and --

14 THE COURT: I don't think you said that you asked for that in your papers
15 but you didn't say you have reason to believe that they actually have it and not
16 turn it over.

17 MR. WESTBROOK: Page 27, Your Honor. This case --

18 THE COURT: Let me see.

19 MR. WESTBROOK: Page 27, part A, line 10. This case was widely
20 covered in local media and most news stories included a plea for anyone with
21 information about the incidents or people who believe their children might
22 victims to call Metro sexual abuse, juvenile section or Crime Stoppers. The
23 defense requests any information recovered from this media request whether or
24 not the tip proved useful.

25 THE COURT: No, but how do we know they actually got tips?

1 MR. WESTBROOK: They haven't asked. We have asked for the
2 information, they have not provided it. But we are aware from the discovery
3 that at least one tip has come down. That was the genesis of this case. But
4 they haven't even asked about those things. This is why I provided --

5 THE COURT: Alright. You see the problem with these requests -- I'm
6 gonna deny your motion and you're gonna refile it, okay? The problem with
7 your request is it's extremely overbroad. You got to focus on specific pieces of
8 evidence that you believe are in their possession, custody or control that they
9 haven't turned over. This -- you're -- what you do and what defense counsel
10 that I'm starting to see is really becoming frustrating to me is these extremely
11 overbroad discovery requests where they ask for everything, things that the
12 State has, things that the State doesn't have, things that you wished the State
13 have but they never have, and you require me to have to go through and try to
14 figure out what they might have that they aren't turning over when it's your job
15 to come forward with evidence on some evidence that they have something
16 that they haven't turned over.

17 I'm not gonna consider this any further. I've heard enough. Your
18 motion is denied in part and granted in part to the extent that I said, alright?

19 MR. WESTBROOK: Can I ask which parts are granted?

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THE COURT: No, you're not asking any more questions.

MR. WESTBROOK: Which parts are granted?

THE COURT: I indicated that on the record already.

Marshal, will you please escort them out? Thank you. I'm done.
It's denied without prejudice.

[Proceedings concluded, 10:27 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


DALYNE EASLEY
Court Recorder

We have one
just that
believe not
guilty one all
count ~~one~~ of
what is said
not stop?
Can you talk to him?

✓ Harold Simpson

We have one
just that
believe not
guilty one all
parents ~~and~~
what up and
next stop?
can you talk to him?

Shirley C. King

- Discussed with Pauline's counsel, on phone
at 3:20 p.m. No consensus. Δ objects to Allen Charge.
- Jail called for return of Δ. 3:28 p.m.
- Called parties back at 3:44 p.m.
- State requested Allen Charge.
- Δ objects to Allen Charge.
- Δ's attorney moved to require to

On behalf of CCA

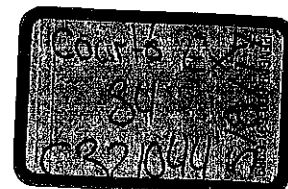
5/8/2017

State of Nevada
v.
Jose Azucena

Every Criminal Case....

- *WHO* is responsible?
- *WHAT* is the criminal conduct?

WHO is responsible?



No one but Jose Azucena has ever
been identified as their abuser.....

Mirabel

Maradel

Jatziri

Yezlene

Scarlett

Nicole

Time Frame

- Where a child has been the victim of
 - Sexual assault w/a minor under the age of 14 and/or
 - lewdness with a minor under the age of 14 and/or
 - First degree kidnapping
 - and does not remember the exact date of the act, the State is not required prove a specific date, but may prove a time frame within which the act took place.

November 1, 2014 until
November 30, 2016

- Mirabel – - 8 years old (6-8) (7-8)
- Maradel – - 8 years old (6-8) (7)
- Jatziri – - 10 years old (7-9) (8-9)
- Yezline – - 8 years old (6-8) (7)
- Scarlett – - 7 years old (7) (6-7)
- Nicole – - 1 years old (1)

WHAT?

What is the criminal conduct for which the law holds him responsible?

- ▣ LEWDNESS WITH A CHILD UNDER THE AGE 14
- ▣ CHILD ABUSE, NEGLECT OR ENDANGERMENT
- ▣ INDECENT EXPOSURE
- ▣ SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE ATTEMPT LEWDNESS WITH A CHILD UNDER THE AGE OF 14
- ▣ FIRST DEGREE KIDNAPPING

Credibility

- ▣ The credibility or believability of a witness should be determined by
 - ▣ Her manner upon the stand,
 - ▣ Her relationship to the parties,
 - ▣ Her fears,
 - ▣ Her motives,
 - ▣ Her interests or feelings,
 - ▣ Her opportunity to have observed the matter to which she testified,
 - ▣ the reasonableness of her statements and
 - ▣ the strength or weakness of her recollections.
- ▣ If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

Credibility - Children

- ▣ ***Voir Dire***
- ▣ Her manner upon the stand - (Child's mannerisms and demeanor)
- ▣ Her relationship to the parties - (Child's relationship)
- ▣ Her fears - (Child's fears)
- ▣ Her motives - (Child's motives)
- ▣ Her interests or feelings - (Child's interests or feelings)
- ▣ Her opportunity to have observed the matter to which she testified - (Child's observations)
- ▣ the reasonableness of her statements and - (Child's statements)
- ▣ the strength or weakness of her recollections - (Child's recollections)
- ▣ KIDS ONLY ANSWER WHAT YOU ASK THEM

The Disclosure

- Delayed
- 3 Moreno girls & Yezline all afraid parents would be hurt or killed
- Chuck e Cheese was catalyst to disclosure
 - alone and far away
 - in their minds became imminent
- Kid Logic
 - tell Yusnay because she was not covered by threats
- Good Grooming – not want to tell

The Disclosure

- Yusnay said:
- 10/15/16 – **Jatziri** – Hi – are you alone?
 - Nervous & anxious – I want to tell you something
 - Can't tell husband or mom
 - If mom or dad find out they will be killed
 - Touched by a man call Grandfather (Abuelo)
 - Named Don David
 - Touches body and private parts
 - Happens in his house
 - Put the candy on his penis

The Disclosure

- Yusnay said:
- **Jatziri**
 - See the man pull out his penis
 - Touch parts as they got out of car
 - Jatziri told her about Yezline and tape
 - Told about sisters
 - Also describes her as terrified
 - Touched Mirabel in car
 - **Jatziri** – leaves and goes to get twins and Yezlene

The Disclosure

83 *Yusnay said:*

- **Mirabel** said touched her cosa when they go eat
- Called them his girlfriends
- **Maridel** said go to house and ask do you want candy?
- Candy on his penis
- Body was touched
- Touched cosa with hands

The Disclosure

83 *Yusnay said:*

- **Yeziene**
 - threw on bed and tied hands
 - Remove clothing
 - Bind feet with tape
 - Don David
 - Afraid he would kill parents
 - Show his penis
 - Ask if want candy
- At this time no **Scarlett**
- Yusnay – not really know defendant and only in complex short while – U VISA

Credibility?

- Revenge? NO
- Money? NO
- Manipulation? NO
- Impute Motive of Mom's to Kids?
 - U VISA
 - Why a friend – abuelo – why not a stranger?
 - Easier victimizations to concoct?
- Is there any evidence of false memory? NO
- Is there any evidence of suggestibility? NO

Corroboration

- There is no requirement that the testimony of a victim of sexual assault or lewdness be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty
- WORDS ALONE ARE SUFFICIENT BECAUSE THE LAW RECOGNIZES THESE CRIMS OCCUR IN SECRET

Corroboration

- ▣ These kids corroborate each other on the salient details
- ▣ Kitkats
- ▣ Geographically Corroborate one another
- ▣ Some viewed abuse of others
- ▣ All ID Defendant
- ▣ Exposure
- ▣ Touching
- ▣ Threats
- ▣ Treats

Yezline
Estrella
Counts 24-36

First Degree Kidnapping Count 24

- A person who leads, takes, entices, or carries away and/or detains any minor
 - 1) with the intent to keep the minor for a protracted period of time or permanently and/or imprison or confine the minor from his or her parents, guardians, or any other person having lawful custody of the minor;
 - 2) with the intent to hold the minor to unlawful service; or
 - 3) perpetrate upon the person of the minor any unlawful act;
- is guilty of First Degree Kidnapping.

First Degree Kidnapping

- The law does not require the person being kidnapped to be carried away for any minimal distance.
- Consent of a minor under the age of 18 is not a defense to First Degree Kidnapping.
- Force or threat of force is not an element of First Degree Kidnapping.
- While a guilty verdict must be unanimous, you need not be unanimous on the means or the theory of First Degree Kidnapping in arriving at your verdict.

First Degree Kidnapping

- who leads, takes, entices, or carries away and/or detains any minor
 - He pushed me in apartment/grabs hand and puts inside
 - Tie up my feet hands and mouth with tape
 - On the bed; took off clothes (underwear and pants and pulled up shirt)
 - Mirabel sees her pulled inside
- perpetrate upon the person of the minor any unlawful act
 - Sexual assault / LWM

Sexual Assault of a Minor < 14 Counts 24 & 28

- A person who subjects a minor under sixteen to sexual penetration is guilty of sexual assault on a minor under the age of 14.

Sexual Assault of a Minor < 14

"Sexual penetration" includes penetration however slight. Sexual penetration includes digital penetration, by placing the finger(s) in the genital opening.

The genital opening includes the vagina, the labia majora, labia minora and the clitoris

Sexual Assault of a Minor < 14

- Physical Force is not required

Sexual Assault of Yeziene

- He grabbed me and took off my pants
- He pulled up my shirt a little
- Touched my belly, hands, boobs, kisses mouth
- Touched thing
- I was laying on his bed
- He was in front of me with his clothes on
- Underwear near bed
- Tape white or yellow?

Sexual Assault of a Minor < 14 (24)

- Digital – Use of the fingers on female genital area
- How feel?
 - Hot,
 - moved in circles,
 - tickled,
 - I felt it inside,
 - touched the wet spot where I wipe to go pee,
 - felt skin to skin
 - I remember his hand going inside
- Dr. Cell

Sexual Assault of a Minor < 14 (24)

- Digital – Use of the fingers on female genital area
 - To Mom – crying
 - Put his fingers in there under her underwear
 - There was a time when you sent me to get grandma (Elena) to eat and she wasn't there and he pulled me in the room and taped hands and feet
 - Pulled out underwear and touched me

Lewdness with a Minor < 14

Counts 26, 27, 29, 33, 34, 35, 36

- A person who commits any lewd or lascivious act, other than sexual assault, upon or with the any part of the body of a child under the age of 14
- With the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child,
- Is guilty of LWM
- No requirement for actual arousal

Lewdness with a Minor < 14

- Not necessary the bare skin be touched
- Over the clothes
- LWM must be act with the body but no physical contact is required

Lewdness with a Minor < 14

- 26 – touch / fondle genital area
- 27 – touch butt –
- 29 – touch / fondle genital area – if believe not legal penetration in 28
- 33 – Placing hand near chocolate in pants
- 34 – Att place hand near chocolate
- 35 – kiss mouth
- 36 – touch breasts

Lewdness with a Minor < 14 (26)

26 – touch / fondle genital area – if believe not legal penetration in 25

Same facts that support 25

- Hot,
- moved in circles,
- tickled,
- I felt it inside,
- touched the wet spot where I wipe to go pee,
- felt skin to skin
- I remember his hand going inside

Lewdness with a Minor < 14 (27)

27 – touch / fondle buttocks

- Told Elizabeth touched butt on tape day
- Touching me with the hand
- Touching me in the butt
- Touched me in the butt over 5 days

Lewdness with a Minor < 14 (26)

26 – touch / fondle genital area – if believe not legal penetration in 25

Same facts that support 25

- Hot,
- moved in circles,
- tickled,
- I felt it inside,
- touched the wet spot where I wipe to go pee,
- felt skin to skin
- I remember his hand going inside

Lewdness with a Minor < 14 (35)

■ 35 – kiss

- Kiss me on the cheeks and mouth
- Kiss me on the mouth
- (tape)
- Kissed my mouth (trial)

Lewdness with a Minor < 14 (36)

■ 36 – breasts

- touched my boobs on the tape day

Lewdness with a Minor < 14 (33 & 34)

■ Alternative

- 33 - causing and/or directing and/or encouraging Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of Y.E. on or in close proximity to the genitals of Defendant
- 34 - attempting to cause and/or direct and/or encourage Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of Y.E. on or in close proximity to the genitals of Defendant

Lewdness with a Minor < 14 (33 & 34)

- He would put the chocolate on his private part
- He would do that inside his clothes
- I had to reach in his clothes to get the candy
- I did take the candy
- To mom – when we would go get the candy he would rub it on his part
- When we went to get the candy – we would throw it out

Sexual Assault of a Minor < 14 (28)

- Digital – Use of the fingers on female genital area -
- Car
 - David touched it (thing) in the car
 - Yaziri and the twins were there
 - I felt it inside,
 - felt skin to skin
 - I remember his hand going inside

Lewdness with a Minor < 14 (29)

- 29 – touch / fondle genital area – if believe not legal penetration in 28
- Same facts that support 28
 - David touched it in the car
 - Yaziri and the twins were there
 - I felt it inside,
 - felt skin to skin
 - I remember his hand going inside

Indecent Exposure Count 31

- A person who makes any open and indecent or obscene exposure of his person is guilty of Indecent Exposure
- An exposure becomes indecent when it occurs at such a time and place where a reasonable man knows or should know his act will be open to the observation of others. The required criminal intent is usually established by some action by which a defendant draws attention to his exposed condition or by a display in a place so public that it must be presumed it was intended to be seen by others

Child Abuse Counts 30 & 32

- A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering because of abuse or neglect by sexual exploitation or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect by sexual exploitation is guilty of Child Abuse, Neglect, or Endangerment

Child Abuse Count 30 – Exposing Penis

- Abuse is Maltreatment
- Maltreatment of a child occurs if a child been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic
- Exposure of adult male genitalia coupled with telling the child not to tell

Child Abuse

Count 30 – Exposing Penis

- Showed his private part near the back of car
- Circled in parking lot
- Happened more than one time
- Circled male genitalia
- Jatziri and twins were there
- Exposure of adult male genitalia coupled with telling the child not to tell

Child Abuse

Count 32 – showing Pornography

- Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.
- Sexual Exploitation means forcing, allowing or encouraging a child to view a pornographic film or literature

Child Abuse

Count 32 – showing Pornography

- I saw David with phone
- One girl was eating the thing of one guy
- They did not have clothes
- We were outside
- Showed us one time
- Jatziri and the twins were there

Nicole
Estrella
Count 37



Lewdness with a Minor < 14
Count 37

- Touching or rubbing the body of Nicole when Yezline went to retrieve child from Defendant's apartment
- Told Maria
- Maria demonstrated

Mirabel
Moreno
(MM1)
Counts 9-14

Lewdness with a Minor < 14

Counts 9, 13, 14

- 9 - hand or penis to touch or rub the genital area
 - Used his thing to touch my front part
 - Used his hand
 - Touched me over clothes
 - More than one time
 - Outside his house
 - Cried power box
 - When Maribel explained touching to Mom she didn't want to talk, was crying and also demonstrated for Mom

Lewdness with a Minor < 14 (13 & 14)

- Alternative
- 13 - causing and/or directing and/or encouraging Y.E. to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of MM1 on or in close proximity to the genitals of Defendant
- 14 - attempting to cause and/or direct and/or encourage MM1 to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of MM1 on or in close proximity to the genitals of Defendant

Lewdness with a Minor < 14 (13 & 14)

- Alternative
- Put candies in front of his thing then tell Yezline to touch it
 - Wanted me to take candies from his thing
 - Asked Yezline to take
 - Asked Maradel to take
 - Asked Jatziri to take
 - Chocolate happened more than one time
 - Kitkats, skittles and chicklets

Indecent Exposure Count 11

- Saw Don David's private part
- Outside house (near tree) 4Yzline and sisters there
- Outside his door
- Thing brown & bog
- Inside his house showed thing

Child Abuse Counts 10 & 12

- 10 – exposing Penis
 - Saw Don David's private part
 - Outside house (near tree) 4Yzline and sisters there
 - Outside his door
 - Thing brown & bog
 - Inside his house showed thing

Child Abuse Counts 10 & 12

- 12 – Showing Pornography
- On phone
- Men and woman no clothes on
- Not remember what they were doing
- My sisters and Yezline there
- Leo Not there

Maridel
Moreno
(MM2)
Counts 15-19

Lewdness with a Minor < 14
Counts 15, 16, 17, 18, 21, 22

- 15 – Kiss
 - Kissed on mouth
- 16 – Breasts
 - Happened more than one time
 - Yezlene and sisters there
 - Hand on chichi

Lewdness with a Minor < 14
Counts 17 & 18

- 17 – Genital area
 - Happened more than one time
 - On black box
 - Outside, not inside his house
 - Over and under clothes
 - Sisters and Yezlene there
 - Demonstrated for Mom
 - She told David no – David said shut up – its not bad – told David you have a wife and he replied you are my girlfriends
- 18 – Buttocks
 - Touched tail more than one time
 - Over and under clothes

Lewdness with a Minor < 14 Counts 21 & 22

- Alternative
- 21 - causing and/or directing and/or encouraging MM2 to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of MM1 on or in close proximity to the genitals of Defendant
- 22 - attempting to cause and/or direct and/or encourage MM2 to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of MM2 on or in close proximity to the genitals of Defendant

Lewdness with a Minor < 14 Counts 21 & 22

- Alternative
- Put them in his thing (chocolates)
- Then say do you want some
- Kitkats
- Showed where outside
- 2 sisters and Yezline there
- Stood by door when did this

Child Abuse Counts 19 & 23

- 19 -- exposing Penis
 - Saw Don David's private part
 - Outside house (near tree) Yezline and sisters there
 - Outside his door
 - Thing brown & bog
 - Inside his house showed thing

Child Abuse Counts 19 & 23

- 12 – Showing Pornography
- Didn't remember at trial
- Previously said showed us but don't remember what was on it
- I didn't like it
- Showed to Yezlene and sisters
- My sister told me – not see
- There when showed phone and could not see

Indecent Exposure Count 20

- A person who makes any open and indecent or obscene exposure of his person is guilty of Indecent Exposure
- An exposure becomes indecent when it occurs at such a time and place where a reasonable man knows or should know his act will be open to the observation of others. The required criminal intent is usually established by some action by which a defendant draws attention to his exposed condition or by a display in a place so public that it must be presumed it was intended to be seen by others

Indecent Exposure Count 20

- Saw Defendant's private outside
- Uses it to pee
- Saw inside his house too
- More than one time

Jatziri
Moreno
Counts 1-8

Lewdness with a Minor < 14 Counts 1, 2, 5, 6, 7

- 1 - kiss
 - Remember 1 time on mouth at trial
 - Tells Mom kiss on mouth
- 2 & 7 - touch genital area
 - Touched me in the front part with his hand more than one time
 - At Esther's house and at his house
 - Over and Under clothes
 - With his hand
 - Tells Yusnay touches body and private part
 - Demonstrated for mom Amanda
 - Explained both threats to kill and take far away to mom

Lewdness with a Minor < 14 Counts 6 & 7

- Alternative
- 6 - causing and/or directing and/or encouraging JM to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of JM on or in close proximity to the genitals of Defendant
- 7 - attempting to cause and/or direct and/or encourage JM to reach into the front pants pocket of Defendant to get some chocolate, thereby placing the hand of JM on or in close proximity to the genitals of Defendant

Lewdness with a Minor < 14 Counts 6 & 7

- 21 Alternative
- 22 Went to his house to get some chocolate and mom told us to hurry
- 23 He put chocolate on his part
- 24 Took his part out of his pants
- 25 We got out of his hand
- 26 Used sleeve of the sweater to cover hands
- 27 Not touch the chocolate after touched his part
- 28 Kitkats / kisses

Indecent Exposure Count 4

- 29 A person who makes any open and indecent or obscene exposure of his person is guilty of Indecent Exposure
- 30 An exposure becomes indecent when it occurs at such a time and place where a reasonable man knows or should know his act will be open to the observation of others. The required criminal intent is usually established by some action by which a defendant draws attention to his exposed condition or by a display in a place so public that it must be presumed it was intended to be seen by others

Indecent Exposure Count 4

- 31 Happened one time when wife took us to his house and she left
- 32 Took out his part
- 33 Use to go pee
- 34 Brown, big and took from pants
- 35 More than one time
- 36 Only one time in his house

Child Abuse Count 3 & 8

- 3 – exposing Penis
- Happened one time when wife took us to his house and she left
- Took out his part
- Use to go pee
- Brown, big and took from pants
- More than one time
- Only one time in his house

Child Abuse Counts 19 & 23

- 8 – Showing Pornography
 - People on phone
 - No clothes
 - Kissing
 - Outside his house
 - Sisters, Yezline and Litz there
 - Told Mom grandpa shows videos where people are getting married – the guy gets on top of the women and they get married – no bra – no underwear
 - Woman eating the thing of the man

Scarlett Rangel Counts 38-39



Indecent Exposure Count 39

- A person who makes any open and indecent or obscene exposure of his person is guilty of Indecent Exposure
- An exposure becomes indecent when it occurs at such a time and place where a reasonable man knows or should know his act will be open to the observation of others. The required criminal intent is usually established by some action by which a defendant draws attention to his exposed condition or by a display in a place so public that it must be presumed it was intended to be seen by others

Indecent Exposure Count 39

- Scarlett said the man showed her his part
- His Private Part
- While she was at Lorena's (babysitter)
- Circled a man's private
- Inside door
- Circled apartment door where Defendant lived
- Doesn't know his name
- ID him in Court and for police in lineup
- He told me to be quiet and not tell anyone

Child Abuse Count 38

- Abuse is Maltreatment
- Maltreatment of a child occurs if a child been subjected to harmful behavior that is terrorizing, degrading, painful or emotionally traumatic
- Exposure of adult male genitalia coupled with telling the child not to tell

Common Sense

- Reasonable inferences
- Not speculation or guess
- Doubt to be reasonable based on a reason
– not on speculation
- Unanswered questions

Verdict

MEMO
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
CARLI L. KIERNY, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12010
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

JOSE AZUCENA,

Defendant,

CASE NO. C-17-321044-1
DEPT. NO. II
DATE: April 26, 2017
TIME: 10:30 a.m.

MEMORANDUM REGARDING THE USE OF NRS 51.385 TO ADMIT HEARSAY

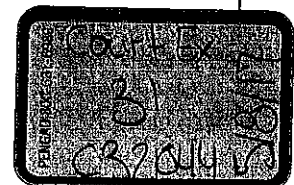
TESTIMONY

COMES NOW, the Defendant, JOSE AZUCENA, by and through his counsel, P. DAVID WESTBROOK and CARLI L. KIERNY, Chief Deputy Public Defenders, and hereby submit the following motion regarding NRS 51.385 for the Court's consideration.

DATED this 25th day of April, 2017.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: P. David Westbrook
P. DAVID WESTBROOK, #9278
Chief Deputy Public Defender



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ARGUMENT

- 1) The statement must be made by a minor under the age of 10;
- 2) A hearing must be held outside the presence of the jury;
- 3) During the hearing, the Court must determine that “the time, content and circumstances of the statement provide sufficient circumstantial guarantees of trustworthiness;”
- 4) “The child testifies at the proceeding or is unavailable or unable to testify.”

The Statement of a minor can only be admitted if the witness is deemed particularly likely to be telling the truth. Under NRS 51.385 (2), the court SHALL consider whether:

- (a) The statement was spontaneous;
- (b) The child was subjected to repetitive questioning;
- (c) The child had a motive to fabricate;
- (d) The child used terminology unexpected of a child of similar age; and
- (e) The child was in a stable mental state.

Child hearsay statements can only be admitted if the Court finds, "(1) the declarant was particularly likely to be telling the truth when the statement was made; (2) the statement is at least as reliable as evidence admitted under any of the accepted hearsay exceptions; and (3) the statement is so trustworthy that adversarial questioning would add little to its reliability." Felix, *supra*, 109 Nev. at 180–81.

The process used by the State has placed both the Court and the defense at a disadvantage. The State sent the defense a notice of its intent to use statements of the five minor witnesses on April 12, 2017; however, the State never revealed *specifically* which statements it intends to use. This is a problem.

Each and every statement must be considered separately to determine whether there are sufficient guarantees of trustworthiness. A "blanket" determination of the admissibility of statements is error. Felix v. State, 109 Nev. at 187. We are now on day three of this trial. To our knowledge, the State has never filed a motion with the court requesting a hearing, providing relevant exhibits to the court, or identifying what *specific* statements it intends to introduce. How can the defense or the Court prepare for such a hearing?

The text of NRS 51.385 does not establish a clear deadline by which the State must request a hearing, but neither does it abandon other statutory rules of evidence and discovery, or constitutional requirements such as the rights to fundamental fairness and a fair trial. *See* NRS Const. Amend. V, VI. Holding this hearing on the third day of trial is not fair to the defense or the court, especially when accusations are the *only* evidence in this case. If the State is concerned that its alleged victims need to be *bolstered* because they cannot testify with sufficient consistency or credibility, the answer is not adding hearsay, it is dismissing the case.

///

///

1 Respectfully submitted this 25th day of April, 2017.

2 PHILIP J. KOHN

3 CLARK COUNTY PUBLIC DEFENDER

4
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6 By: P. David Westbrook

7 P. DAVID WESTBROOK, #9278

8 Chief Deputy Public Defender
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David Westbrook

From: David Westbrook
Sent: Tuesday, April 25, 2017 9:42 PM
To: scottir@clarkcountycourts.us
Cc: Carli Kierny; 'Christopher.Hamner@clarkcountyda.com'; 'Stacey Kollins'
Subject: Small correction...

I inadvertently left off part of the citation to Felix v. State. The full citation should have read: Felix v. State, 109 Nev. 151, 156, 849 P.2d 220, 224 (1993)(superceded on other grounds by statute, as stated in Evans v. State, 117 Nev. 609, 625, 28 P.3d 498, 509-10 (2001)).

The statute modification referenced in Evans concerns the former NRS 48.030(2), which used to say that children under 10 could not be witnesses if they appeared "incapable of receiving just impressions of the facts ... or of relating them truly." Nevada removed the language treating "children under 10" as a special case. Of course, this has no relevance to our discussion of NRS 51.385.

Thanks again,

P. David Westbrook
Deputy Public Defender
702-455-1762

This message contains confidential information and is intended only for the individual(s) named. Do not disseminate, distribute or copy this e-mail. Please notify the sender if you have received this message by mistake, and delete this e-mail from your system.

you are heard from Maria Barajas
that Yeaplene is prone to vaginal
infections. You are instructed that
those infections have nothing to
do with the allegations of
contact with the defendant.

~~They are not evidence in this
case and must be
disregarded.~~

You are not to draw any inference that the Defendant
these infections.

Q

Gover
[Signature]

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

PHILIP J. KOHN Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155
Attorney for Appellant	ADAM LAXALT Attorney General 100 North Carson Street Carson City, Nevada 89701-47 (702) 687-3538

CERTIFICATE OF SERVICE

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