

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

JOSHUA HONEA,

Appellant,

v.

STATE OF NEVADA,

Respondent.

Docket No. 76621

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX**

**VOLUME 11**

Jonathan MacArthur, Esq.  
Nevada Bar No. 7072  
Monique McNeill, Esq.  
Nevada Bar No. 9862  
P.O. Box 7559  
Las Vegas, NV 89125  
(702) 497-9734  
Attorney for Appellant Honea

## INDEX

<u>Document</u>	<u>Page Nos.</u>
Ex Parte Application for Order Requiring Material Witness to Post Bail	vol. 1, 103-108
Information	vol. 1, 1-17
Instructions to the Jury	vol. 13, 3058-3116
Judgment of Conviction	vol. 14, 3291-3296
Motion for Judgment of Acquittal, or in the Alternative, Motion for a New Trial	vol. 13, 3129-3177
Motion for Setting of Appeal Bail,	vol. 14, 3249-3253
Motion to Admit Evidence of M.S.'s Knowledge Of Sex Acts and Prior Sexual Conduct	vol. 1, 26-31
Notice of Appeal	vol. 14, 3294-3296
Notice of Motion and Motion to Preclude Karen Hughes, And Reference to Chief Deputy District Attorney Elizabeth Mercer and/or Christopher Baughman and/or Convicted Defendant Raymond Sharpe at Trial	vol. 1, 84-95
Notice of Motion and Motion to Use Reported Testimony	vol. 1, 18-25
Order Declaring Defendant Indigent	vol. 14, 3293
Order Denying Motion for Acquittal or, in the Alternative, Motion for a New Trial	vol. 14, 3245-3248
Order Requiring Material Witness to Post Bail	

Or Be Committed to Custody	vol. 1, 109-110
Reply to State's Opposition to Motion to Admit Evidence Of M.S.'s Knowledge of Sex Acts and Prior Sexual Conduct	vol. 2, 274-276
Second Amended Information	vol. 2, 258-273
State's Notice of Motion and Motion in Limine re Raymond Sharpe	vol. 1, 32-33
State's Opposition to Defendant's Motion for Judgment of Acquittal, or in the Alternative, Motion for a New Trial,	vol. 14, 3204-3221
State's Opposition to Defendant's Motion to Admit Evidence of M.S.'s Knowledge of Sex Acts and Prior Sexual Conduct	vol. 1, 80-83
Transcript November 6, 2017	vol. 1, 34-79
Transcript November 15, 2017	vol. 1, 96-102
Transcript December 15, 2017	vol. 1, 120-140
Transcript January 3, 2018	vol. 13-14, 3178-3203
Transcript, January 10, 2018	vol. 14, 3222-3244
Transcript, May 21, 2018	vol. 14, 3254-3290
Trial Transcript, November 27, 2017	vol. 1-2, 111-257
Trial Transcript, November 28, 2017	vol. 2, 277-440
Trial Transcript, November 29, 2017	vol. 2-3, 441-639
Trial Transcript, November 30, 2017	vol. 3-4, 640-895
Trial Transcript, December 1, 2017	vol. 4-5, 896-1080

Trial Transcript, December 4, 2017	vol. 5, 1081-1246
Trial Transcript, December 5, 2017	vol. 5-6, 1247-1396
Trial Transcript, December 6, 2017	vol. 6-7, 1397-1551
Trial Transcript, December 7, 2017	vol. 7, 1552-1725
Trial Transcript, December 8, 2017	vol. 7-8, 1726-1979
Trial Transcript, December 11, 2017	vol. 8-9, 1980-2182
Trial Transcript, December 12, 2017	vol. 9-10, 2183-2389
Trial Transcript, December 13, 2017	vol. 10-11, 2390-2534
Trial Transcript, December 14, 2017	vol. 11-12, 2535-2811
Trial Transcript, December 15, 2017	vol. 12-13, 2812-3057
Verdict	vol. 13, 3117-3128

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

JOSHUA HONEA

By:           /S/MONIQUE MCNEILL            
MONIQUE A. MCNEILL  
State Bar # 9862

1 Q. So in 7th grade how does Morgan communicate  
2 with Josh Honea?

3 A. By her cell phone.

4 Q. From a mom's perspective what is her  
5 interaction with him, how is she acting?

6 A. She was acting very connected with him, having  
7 long conversations. There would be arguments. She would  
8 cry.

9 Q. As a mom what did you -- was this any way  
10 you'd ever seen her behave in any other friendship,  
11 whether that friendship was male or female?

12 A. Not connected like that. It was more grade  
13 school conversation.

14 Q. So when you see her being this connected with  
15 him, what, if anything -- do you approach him, approach  
16 her, do you do something? What do you do?

17 A. I asked her specifically if she was okay.  
18 What the argument was about. Why does he continue to come  
19 around. I was not comfortable. I made it very clear to  
20 her, I'm not comfortable at all with him in my home.

21 Q. You just referred to that as one argument, but  
22 when we talked before you said arguments. Were there more  
23 than one argument -- we're talking about in 7th grade?

24 A. No. This was a regular pattern of arguments  
25 back and forth. I don't know what all the arguments were

1 about, she didn't share all of those details.

2 Q. Would it be fair to say you just saw the  
3 emotional aftermath with her crying and doing things like  
4 that?

5 A. Yes, extremely emotional.

6 Q. If you were in the argument or in the  
7 interaction or present for it, did you offer comfort to  
8 Morgan?

9 A. Yes.

10 Q. Did she tell you what those arguments were  
11 about?

12 A. No.

13 Q. So Christmas of 7th grade was Josh around?

14 A. Yes.

15 Q. Did anything come to mind about any  
16 interactions between Josh and Morgan at Christmas of that  
17 year, you can recall?

18 A. I recall that Christmas he invited Morgan to  
19 his house to be with his family and grandparents. And she  
20 needed to bring gifts.

21 Q. I'm trying not to jump around. Do you have a  
22 specific recollection about Morgan's 13th birthday?

23 A. Yes, I do.

24 Q. Tell me about that?

25 A. Sure. For her 13th birthday Josh wanted to

1 surprise her and decorate her bedroom with streamers and  
2 party favors.

3 Q. Did that happen?

4 A. Yes.

5 Q. Did -- who did that?

6 A. Josh decorated her room.

7 Q. Did he bring anybody with him?

8 A. No.

9 Q. Was he allowed to take Morgan out for that  
10 birthday?

11 A. That I don't remember.

12 Q. When he decorated Morgan's bedroom for her  
13 13th birthday, did he come and ask you if he could do  
14 that, how did that come about?

15 A. Yes. He asked me directly if he could  
16 decorate her room.

17 Q. Did -- I mean, did you let him in? Did you  
18 give him a key? How did he get in to do that?

19 A. He had a key to my house.

20 Q. When was he given a key to your house?

21 A. I don't know the exact time, but he had a key  
22 for I would say at least 2 months. Because there would be  
23 times Morgan would leave her keys at home because I took  
24 her to school and she'd forget her keys. And since he  
25 lived close by it was convenient.



1 Q. Nothing worrisome about giving him a key,  
2 right?

3 A. I didn't think anything of it.

4 Q. Did Morgan finish the 7th grade at Johnson  
5 Middle School?

6 A. Correct.

7 Q. Now, around this time --

8 THE COURT: Might this be a place -- we're  
9 moving into a new line of inquiry. For that reason it's  
10 about 10 after 5. We are going to recess for the  
11 evening.

12 I am going to ask the jurors to return tomorrow at  
13 10:00. The reason we're not coming back at 9:00 is so the  
14 court can work on jury instructions with counsel. That is  
15 not something that the jurors need to be present for. And  
16 to accommodate some scheduling needs of counsel as well.

17 It is very possible, if not likely, we will be  
18 providing you with those instructions and closing Friday  
19 afternoon. So we just want to give you that  
20 understanding.

21 But we'll start tomorrow at 10:00 and proceed with  
22 the conclusion of this witness.

23 JURY ADMONITION

24 During the recess, ladies and gentlemen, you are  
25 admonished not to converse among yourselves or with anyone

1 else, including, without limitation, the lawyers, parties  
2 and witnesses, on any subject connected with this trial,  
3 or any other case referred to during it, or read, watch,  
4 or listen to any report of or commentary on the trial, or  
5 any person connected with this trial, or any such other  
6 case by any medium of information including, without  
7 limitation, newspapers, television, internet or radio.

8 You are further admonished not to form or express any  
9 opinion on any subject connected with this trial until the  
10 case is finally submitted to you.

11 Have a good night. See you tomorrow at 10:00.

12 THE WITNESS: Thank you.

13 THE COURT: Is there anything we need to address  
14 before we conclude tonight.

15 MS. KOLLINS: I wants to make sure all the  
16 exhibits are where they need to be returned. Everything I  
17 believe is in position.

18  
19  
20  
21  
22  
23 \* \* \* \* \*  
24  
25

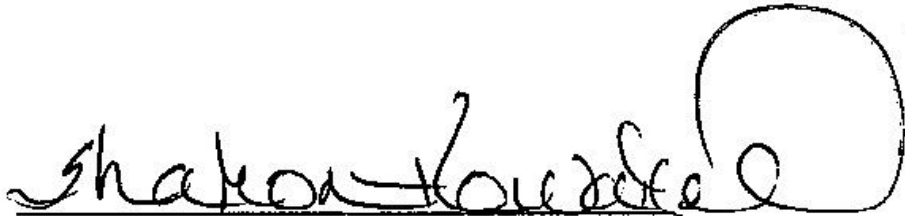
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CERTIFICATE  
OF  
CERTIFIED COURT REPORTER

\* \* \* \* \*

I, the undersigned certified court reporter in and for the State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the time and place therein set forth; that the testimony and all objections made at the time of the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing is a true record of the testimony and of all objections made at the time of the proceedings.



\_\_\_\_\_  
Sharon Howard  
C.C.R. #745

< Dates >.	10:00 115:21.	2011. 91:16.
April 1st 44:25.	10:00. 115:13,	2012 108:1, 109:2,
April 2015 33:17,	116:11.	109:6.
36:18.	11 91:20, 91:22,	2015 16:2, 28:2,
DECEMBER 13, 2017	92:1, 92:15,	44:19, 44:25,
1:27, 4:1.	92:17, 92:20.	58:20, 67:25,
January 2016	118 3:17.	104:4.
89:14, 89:15.	12 37:20, 91:12,	2017 86:18.
January, february	91:24, 92:1,	2017. 90:1.
89:25, 90:11.	92:13, 101:2,	25 1:2, 68:4.
June 15, 2015	101:3, 101:18,	25th 63:18.
38:20.	102:16, 103:23,	27 3:7.
June 16th 62:23.	111:2.	2:21 106:21.
June 20, 2013	12th 99:25.	2:26 106:21.
108:25.	13 58:23, 59:10.	2:30. 25:22.
June 25th 60:15,	13th 113:22,	.
60:22, 61:12.	113:25,	.
March '17 87:18,	114:13.	< 3 >.
87:23.	14 15:8.	3 10:1, 27:19,
March 16th	14. 5:24, 6:6.	36:15, 61:2,
47:21.	15 6:12.	61:6, 63:12,
March 2017 86:21,	15. 6:6.	67:23, 69:7,
86:24, 87:7.	16 5:3, 6:14,	81:6, 81:7,
March 30, 2015	15:8, 15:17,	106:18, 108:8,
34:2, 35:4,	17:25.	111:8, 111:9,
35:16, 48:11,	17 5:23, 6:5,	111:10,
49:1, 52:14,	15:8, 17:24,	111:17.
53:25.	19:1.	30 88:10.
May 2015 72:16.	17. 16:24.	30th 52:9, 53:8,
May, june 2015	18 6:6, 63:25,	53:11, 54:19,
68:11.	86:16, 86:17,	71:11, 86:18,
May, may 15th	109:18.	91:15, 92:8.
72:2.	1995 91:15.	.
November 13	1999 92:8.	.
5:24.	1:15. 26:4.	< 4 >.
November 2015	.	4 6:10, 68:3,
45:16, 46:9,	.	104:4.
49:8.	< 2 >.	47 3:8.
September 2015	2 6:21, 15:3,	4:30 107:2.
88:19, 89:6.	27:17, 47:11,	.
#745 117:28.	67:22, 81:7,	.
'15 32:7.	100:16, 106:18,	< 5 >.
'16 47:13,	114:22.	5 19:23, 67:22,
89:23.	20 27:11,	84:23, 84:25.
'17 89:24.	108:20.	5. 68:3, 115:10.
.	2010 92:20.	57 34:5, 34:17,
.	2011 91:9, 91:10,	34:18.
< 1 >.	93:9, 99:25,	57. 33:19.
10 75:24,	100:17, 101:1,	5:00 107:2.
115:10.	103:23.	.

.  
 < 6 >.  
 6 28:23.  
 60 49:23.  
 68 3:9.  
 68. 32:12.  
 .  
 .  
 < 7 >.  
 7 84:25.  
 71 3:10.  
 745 1:34.  
 7th 92:2, 104:8,  
 104:12, 104:24,  
 105:1, 105:15,  
 105:18, 106:12,  
 107:14, 108:1,  
 109:3, 109:6,  
 109:12, 110:20,  
 112:1, 112:23,  
 113:13, 115:4.  
 .  
 .  
 < 8 >.  
 8 15:4, 37:20,  
 80:21.  
 85 3:13.  
 .  
 .  
 < 9 >.  
 9:00 115:13.  
 9th 14:25.  
 .  
 .  
 < A >.  
 abilities 22:21.  
 ability 62:22.  
 able 6:12, 14:17,  
 33:7, 33:12,  
 49:14, 54:14,  
 55:3, 56:24,  
 79:14, 80:11,  
 83:9.  
 abuse 87:13.  
 Academy 57:22.  
 accept 12:8.  
 access 66:2.  
 accessed 21:2.  
 accommodate  
 115:16.

accommodation  
 20:1.  
 accomplished  
 32:3.  
 accounts 94:10.  
 accurate 31:16,  
 37:1, 111:24,  
 111:25.  
 accurately  
 34:10.  
 acknowledge  
 4:10.  
 acknowledged  
 7:6.  
 acknowledges  
 24:4.  
 acquired 6:25.  
 act 13:12.  
 acted 60:7.  
 acting 34:12,  
 112:5, 112:6.  
 action 26:19,  
 45:3, 85:17.  
 activities 98:1,  
 109:4, 111:18.  
 activity 72:2,  
 108:13.  
 acts 16:12.  
 actually 43:13,  
 59:3.  
 add 7:9, 7:15,  
 12:2, 16:14,  
 84:2.  
 additional 7:12,  
 20:25, 62:7,  
 72:13.  
 Additionally  
 10:24.  
 address 19:5,  
 20:16, 67:5,  
 116:13.  
 addressed 19:6,  
 50:10.  
 adjusted 26:10.  
 administrative  
 31:4.  
 admissibility  
 12:9, 12:10,  
 59:17.  
 admissible 17:2,

17:13.  
 admission 34:16,  
 36:8.  
 admit 20:22.  
 admitted 10:20,  
 13:19, 35:1,  
 108:20.  
 admonished 75:13,  
 75:21, 115:25,  
 116:8.  
 ADMONITION 75:11,  
 115:23.  
 adult 78:15,  
 95:13.  
 advice 18:16,  
 20:5, 20:7,  
 20:12.  
 advise 16:8,  
 16:10, 18:12,  
 30:25, 41:2.  
 advised 8:5,  
 29:20, 42:24,  
 42:25, 43:4.  
 advises 20:12.  
 advising 15:25.  
 advocate 15:14.  
 affairs 27:15,  
 28:1, 28:17,  
 28:20, 28:24,  
 31:15, 31:16,  
 34:14, 37:5,  
 44:5, 45:12,  
 45:18, 45:23,  
 46:10, 47:10,  
 47:23, 53:14,  
 53:21, 54:18,  
 56:5, 56:14,  
 56:15, 67:2,  
 73:15, 73:24,  
 74:7.  
 Affect 29:23,  
 40:14.  
 affidavit 78:19.  
 affiliated 47:9.  
 aftermath 113:3.  
 afternoon 11:25,  
 27:4, 47:5,  
 47:6, 86:2,  
 115:19.  
 age 4:11, 4:14,

<p>5:3, 5:5, 5:6, 6:14, 6:15, 6:22, 8:1, 15:3, 15:16, 30:21, 63:25, 95:6, 95:13. agencies 73:17. agency 37:8, 43:6, 43:12, 45:21, 46:16, 76:16. agents 82:12. ages 92:18. ago 11:12. agree 5:19, 71:16. agreed 35:4. aide 93:4. Alabama 22:12. allegation 31:2, 69:13, 69:18. allegations 7:18, 65:12. alleged 4:17, 8:2, 16:12, 28:21. allow 33:9, 48:16, 72:18, 102:6. allowed 23:5, 43:5, 43:12, 46:21, 77:4, 77:6, 114:9. almost 104:4. alone 97:24, 97:25. already 9:11, 10:19, 13:12, 14:8, 14:10, 21:15, 25:19, 30:2, 32:19, 42:21, 47:14, 54:2. alternatively 24:25. Although 17:25. amenability 4:24. amenable 9:21. amendable 4:25, 5:2, 5:6, 5:9, 9:22, 19:17. Amendment 17:4,</p>	<p>20:13, 22:13, 22:14. America 78:6. among 5:13, 75:13, 115:25. analysis 4:23, 5:19, 7:12. analyst 74:12. and/or 78:1, 79:8. Andy 28:7. answer 12:15, 17:1, 20:7, 21:25, 42:21, 46:21, 48:21, 65:14, 73:6, 81:14, 82:11, 102:3. answered 38:11, 48:20, 82:14. answering 17:6, 48:18, 59:5. answers 76:13. anticipate 77:19. anticipated 76:23. anticipation 78:2. anybody 15:13, 25:3, 98:14, 98:17, 114:7. Anyway 4:23. apart 73:13. apologize 74:6. appear 15:13, 15:17, 21:19, 52:4, 62:9, 78:20, 85:2. APPEARANCES 2:1. appeared 97:4. appears 5:6, 15:4, 18:15, 26:3, 108:23. appointed 7:23, 9:2. appointing 8:5. Approach 32:12, 33:18, 34:21, 92:4, 112:15.</p>	<p>approached 43:19, 43:22. appropriate 63:20, 82:3. appropriately 82:2. approximately 61:9, 81:7. April 32:7, 54:12, 54:24, 55:1. Area 27:21, 28:25, 29:2, 30:24, 39:2, 58:3. areas 29:3. arguably 79:7. argue 10:22, 25:20. argued 6:16, 12:25, 25:10. arguing 5:2. argument 78:24, 112:18, 112:21, 112:23, 113:6. arguments 112:7, 112:22, 112:24, 112:25, 113:10. arm 54:21. Around 70:1, 88:19, 90:8, 90:11, 95:12, 96:23, 99:1, 103:4, 104:4, 109:13, 112:19, 113:13, 113:21, 115:7. arrest 46:9. arrested 13:20, 45:10. articulating 84:16. artificial 38:6. aside 33:6, 33:13. asks 10:11. aspect 83:11. aspects 19:11, 21:1. assault 5:2, 10:4, 13:6, 15:16,</p>
---	--	---

16:23, 17:23,  
 17:24, 18:22,  
 18:25, 19:16,  
 24:19, 51:18,  
 52:12, 53:7,  
 53:11, 63:4,  
 63:6.  
 assert 16:8,  
 16:10.  
 asserted 65:11.  
 assign 27:9.  
 assigned 27:13,  
 27:14, 41:17,  
 66:23, 70:5,  
 70:8, 70:12.  
 assignment 27:12,  
 27:18, 28:17,  
 37:21.  
 assist 90:14.  
 assuming 10:15.  
 attach 70:14,  
 84:9.  
 attempted 35:8.  
 attendance 90:3.  
 attended 14:25.  
 attention 28:12,  
 36:17, 50:18.  
 attorney 20:8,  
 21:23, 88:24,  
 88:25.  
 auditorium 96:17,  
 96:19.  
 available 18:10,  
 26:12.  
 awaiting 36:13.  
 aware 6:11, 21:18,  
 24:3, 41:24,  
 51:19, 60:24,  
 62:16, 63:15,  
 66:6, 72:7,  
 73:14, 76:14,  
 87:18, 87:22,  
 101:4, 101:9,  
 104:14,  
 104:17.  
 away 69:5, 86:25,  
 89:24, 90:12,  
 95:1, 95:2.  
 awhile 40:15,  
 89:7.

.  
 .  
 < B >.  
 backing 10:10.  
 bad 95:1, 106:3.  
 balance 102:4.  
 Bank 39:1.  
 Based 4:12, 5:21,  
 20:18, 20:24,  
 29:18, 34:18,  
 36:6, 40:7,  
 52:3, 58:8,  
 59:20, 62:22,  
 62:25, 77:9,  
 82:12, 106:9.  
 bases 14:3,  
 19:13.  
 basically 79:22.  
 basis 12:4, 14:5,  
 14:6, 14:7,  
 76:20, 77:17,  
 79:11, 79:13,  
 82:25, 84:14.  
 Bauman 80:23.  
 beat 48:16.  
 became 82:21.  
 bed 9:19, 15:3,  
 21:17.  
 bedroom 114:1,  
 114:12.  
 began 13:15,  
 59:10, 71:16,  
 82:20.  
 begin 71:10,  
 71:12, 71:13.  
 beginning 33:17,  
 109:12.  
 begins 53:21.  
 behave 112:10.  
 behavior 87:22.  
 belied 5:8.  
 belief 81:22,  
 81:23, 83:20.  
 believed 78:14,  
 79:13.  
 believe 67:22.  
 BELMONTE 3:12.  
 bench 34:21,  
 50:14, 53:3,  
 59:20, 72:10,

75:25, 76:1,  
 76:9, 77:12,  
 77:14, 78:4,  
 79:1, 83:12.  
 bench. 34:24,  
 50:16, 72:11.  
 beneath 81:7.  
 benefit 15:21.  
 besides 39:3,  
 107:9.  
 best 15:15, 22:21,  
 82:1, 101:13,  
 101:15.  
 better 52:5,  
 86:25.  
 beyond 29:21,  
 82:6, 83:15,  
 83:18.  
 bias 12:24, 13:3,  
 13:11, 14:6,  
 24:21, 77:8,  
 79:4, 79:6.  
 big 110:5,  
 110:6.  
 bigger 6:22.  
 bill 11:21.  
 birth 4:13.  
 birthday 5:25,  
 91:14, 92:8,  
 92:10, 99:25,  
 108:24, 113:22,  
 113:25, 114:10,  
 114:13.  
 bit 7:25, 88:9,  
 90:17.  
 blanch 111:3.  
 Bolden 29:2.  
 Bonanza 89:19,  
 89:20.  
 bono 8:17.  
 Boom 69:15.  
 boss 67:12.  
 bought 63:1.  
 bound 11:3.  
 bounds 11:4.  
 bow 84:9.  
 braces 103:24,  
 104:1, 104:3.  
 brakes 40:22.  
 break 26:3,

<p>84:24.  Brief 17:17,  19:24, 19:25,  25:14, 25:15,  26:5, 75:10,  85:1.  briefed 31:25.  briefly 23:22,  28:10, 34:21,  79:21.  bring 14:17,  17:19, 23:15,  80:12, 80:14,  88:22, 89:1,  98:13, 98:16,  113:20, 114:7.  broke 16:6.  brother 110:5,  110:6.  brought 12:16,  14:17, 15:19,  23:12, 50:2,  50:6, 50:18,  50:22, 50:25,  80:13.  building 39:1,  67:4, 68:6.  bulk 22:2.  bunch 29:1.  business 39:20,  39:22.  busy 37:14.  .  .  &lt; C &gt;.  C-15-309548-1  1:1.  calculated 4:11.  calculation  5:21.  Calderon 39:5,  39:17, 39:20,  39:21, 40:2,  40:7, 40:8,  40:12, 41:1,  47:24, 60:5,  61:6, 61:22,  62:11, 62:13,  62:15, 63:14,  64:5, 64:6,</p>	<p>71:25, 76:22,  77:2, 77:18,  79:5, 79:12,  79:17, 84:15.  call 11:24, 25:16,  26:15, 29:6,  29:14, 29:18,  85:12, 88:12,  88:15.  called 8:13, 29:9,  40:12, 45:20,  45:22, 64:4,  70:5, 84:18,  88:7, 88:13.  calling 4:8,  25:24, 29:8,  78:20.  calls 29:3, 85:13,  90:2.  capacity 30:24,  37:23, 96:11.  captain 67:23.  car 93:17.  card 39:22.  cards 39:20.  career 105:7.  careful 102:7.  carrying 37:20.  cart 111:3.  cases 36:16,  37:18, 37:20.  Casino 107:21,  107:23.  casual 96:20.  cause 21:20.  caused 22:20.  causes 25:19.  causing 109:17.  caution 48:14.  cc'ed 62:20.  cell 88:12,  101:11, 112:3.  Center 27:21,  88:7.  certain 4:14,  20:6, 23:15,  28:25, 82:3.  certainly 7:11,  82:3.  CERTIFICATE</p>	<p>117:1.  CERTIFIED 117:3,  117:8.  certify 117:9.  cetera 81:8.  chain 34:10,  56:14, 61:17,  61:19, 66:22.  chair 86:8.  chance 17:15,  84:24.  change 7:2, 19:9,  23:1, 40:20,  81:18, 81:19,  89:23, 90:4.  changed 24:7,  24:14, 28:7,  67:16, 67:24,  74:10, 74:11,  89:25.  Channel 80:21.  charge 5:9, 6:12,  6:13, 37:1.  charges 4:25,  13:5, 17:21,  37:3.  Charleston  107:15.  chart 92:18.  check 101:11.  chief 28:8.  child 5:10, 10:1,  11:6, 15:11,  24:19, 109:23.  Children 52:8.  choir 96:1,  96:5.  choose 24:23.  chose 5:24, 12:22,  13:7.  Chris 67:16,  67:18.  Christiansen  11:20.  Christmas 113:13,  113:16,  113:18.  circuit 41:9.  circulated 5:13.  circumstance 23:2,</p>
---	--	--



<p>93:12.  circumstances 5:4,  10:14, 20:15,  20:19, 22:3,  26:1, 72:19,  76:5, 76:22,  81:19, 81:23,  93:1, 93:15.  city 73:20.  civil 16:4,  37:11.  civilian 28:21,  67:24, 68:1.  claiming 65:12.  clarification  81:15.  clarify 33:11,  69:11, 69:12,  78:2, 78:23.  clarifying 18:8.  clarity 55:25.  Clark 1:6, 29:6,  29:19, 30:13,  30:25, 31:11,  31:18, 44:4,  44:9, 50:1,  50:9, 50:22,  50:24, 51:9,  51:13, 63:2,  68:22, 69:2.  class 95:20.  classmates  11:10.  clear 6:24, 23:18,  59:25, 76:6,  112:19.  CLERK 26:16,  26:18, 26:23,  34:2, 85:15,  85:16, 85:21.  client 15:15,  15:16, 18:12,  19:19, 19:21.  close 41:9, 45:12,  45:15, 46:23,  53:14, 85:7,  94:16, 114:25.  closed 39:15,  49:8, 53:17,  54:15.</p>	<p>closes 54:3.  closing 115:18.  collateral  80:12.  college 90:7.  collude 79:8.  Colquitt 7:8,  7:17, 7:23, 8:4,  8:6, 11:16,  11:19.  comes 55:1, 64:15,  82:17, 82:25,  83:20.  comfort 113:7.  comfortable  112:19,  112:20.  comforting  95:17.  coming 90:1,  110:16,  115:13.  Comiskey 34:20.  Command 27:21,  27:22, 30:24,  56:15, 58:4.  commands 28:25,  29:2.  comment 4:16,  50:13.  commentary 75:17,  116:4.  commissioned  28:22.  communicate 42:9,  101:5, 112:1.  communicated  101:9.  communication  4:11, 34:11,  61:13, 74:15.  communications  62:10.  company 60:4.  compel 31:5,  46:15.  compelled 7:2.  compilation  4:13.  complaint 29:11,</p>	<p>32:1, 32:4,  33:1, 33:23,  35:5, 48:11,  48:25, 49:5,  53:22, 54:15,  54:19, 55:8,  55:11, 55:14,  55:21, 57:3,  69:9, 69:15,  69:25, 70:12,  71:11, 71:14,  71:17, 71:19,  77:10.  complete 4:7,  9:22, 14:9,  30:1, 32:8,  38:7, 39:12,  44:7, 46:12,  69:22, 85:3,  85:5.  completed 33:15,  46:13, 48:16,  63:23, 76:12.  compound 59:6.  computer 69:21.  concede 6:5.  conceded 10:18.  concern 20:3,  20:25, 21:5,  25:19, 30:20,  83:13, 103:16,  109:18.  concerned 8:15,  11:11, 99:4.  concerns 8:20,  19:7, 22:13,  22:21, 30:14,  30:16, 42:10,  50:2, 50:6,  63:1.  concert 96:14,  96:15.  conclude 116:14.  concluded 58:19.  conclusion 12:8,  83:12, 115:22.  conduct 28:20,  31:4, 35:10,  35:11, 35:17,  37:9, 37:11,</p>
--	---	--

<p>39:6, 53:13, 55:6. conducted 54:8. conference 59:20, 76:9, 78:4, 83:12. conferences 76:1. confidence 8:19. confirm 34:22. conflict 22:14. conform 79:25. confuse 55:18. confusing 68:10. confusion 15:1. connect 77:25, 83:14, 84:8. connected 75:15, 75:18, 75:22, 112:6, 112:12, 112:14, 116:2, 116:5, 116:9. connection 82:8. consensual 6:8, 6:23. consent 6:15, 6:16, 17:24, 17:25, 18:1. consideration 18:9. considered 18:3. consistence 5:20. consistent 4:18, 9:16. consistently 99:1. consuming 37:19. contact 6:8, 6:23, 31:12, 38:19, 38:22, 38:24, 40:2, 40:24, 41:11, 41:15, 45:18, 52:16, 57:5, 57:8, 60:11, 61:6, 62:15, 63:12, 63:14, 64:16, 66:15, 66:19, 86:20, 86:24,</p>	<p>110:21, 111:23. contacted 16:3, 31:19, 31:21, 40:6, 51:18, 52:12, 53:7, 53:10, 60:24, 64:12, 103:6. contacting 9:4. contacts 60:1, 60:4, 60:6, 61:2, 62:22. contemplating 36:11. content 29:18, 34:19. contents 42:11. continue 43:8, 54:22, 99:18, 107:25, 112:18. continued 87:11, 99:19. continuing 101:5. contradictory 77:15. contrary 37:10. control 24:9. convenient 114:25. Convention 27:21. conversation 9:5, 16:6, 42:12, 51:10, 70:17, 71:1, 94:5, 94:15, 94:19, 96:20, 106:9, 112:13. conversations 43:16, 95:14, 105:2, 105:21, 112:7. converse 75:13, 115:25. conviction 7:13. cooperation 80:17. cop 40:15.</p>	<p>copied 62:13, 62:21. copy 49:13. corner 10:10. corrected 92:14. correspondence 62:19. Counsel 5:13, 8:24, 15:18, 15:19, 15:24, 26:8, 33:11, 34:21, 48:17, 50:14, 53:3, 72:10, 77:19, 85:3, 85:10, 115:14, 115:16. counseled 68:23. counseling 50:10, 51:1. count 48:18. COUNTY 1:6, 73:20. couple 14:2, 25:11, 37:17, 51:16, 68:20, 88:3, 90:8. course 4:6, 88:11. courses 96:4. cover 5:16, 19:13. create 8:19, 14:5, 69:20, 70:11, 71:14. creates 70:14. creating 71:18. credibility 84:8. crime 27:19, 29:1, 31:3, 36:12, 70:6. Crimes 9:18, 31:12, 31:19, 31:21, 34:11, 34:13, 36:1, 40:24, 41:2, 44:24, 52:8, 52:10. criminally 31:9,</p>
--	--	---

<p>35:8.  critical 5:24,  6:5.  cross 17:7, 17:9,  21:11, 23:19.  Cross-examination  3:8.  CROSS-EXAMINATION  14:4, 22:15,  47:3.  cross-examine  10:24, 12:7,  17:3, 17:8,  17:15, 21:8,  24:1, 24:12.  cross-examining  11:2, 21:9,  21:13.  cry 112:8.  crying 8:14,  113:3.  curious 96:22.  current 77:11,  80:18.  currently 27:5,  27:9, 72:8.  CVS 107:15.  CYAF 69:10.  .  .  &lt; D &gt;.  Dan 34:20.  danger 18:14.  Dara 104:21.  Das 83:3.  date 8:2, 16:1,  32:25, 33:14,  33:15, 33:22,  34:1, 38:18,  40:5, 41:4,  41:12, 44:14,  44:16, 60:19,  61:9.  DATED 1:27,  105:22, 106:4,  106:5, 109:15.  dates 4:13, 32:17,  32:19, 60:13,  63:16.  dating 105:19.</p>	<p>daughter 39:13,  51:20, 63:24,  86:11, 94:25,  95:9, 95:23,  96:23, 107:4,  108:19,  111:24.  day 29:5, 35:5,  44:21, 49:5,  65:25, 72:5,  106:17.  days 51:16, 67:9,  69:2, 69:6,  69:7, 106:17,  106:18.  deal 23:19.  December 96:5.  decide 48:13.  decided 32:1,  36:14, 48:10,  49:4, 64:6,  64:12.  deciding 36:25.  decision 64:10.  decisions 24:10.  declared 23:12.  declined 14:19.  declines 21:25.  decorate 114:1,  114:16.  decorated 114:6,  114:12.  deep 16:22.  Defendant 1:19,  2:5, 20:21,  91:4.  defense 6:4, 7:15,  10:8, 12:19,  12:20, 14:17,  19:4, 19:13,  20:11, 22:6,  26:8, 65:11,  83:25.  defining 56:17.  DELANEY 1:24.  Department 16:3,  27:6, 27:8,  28:25, 44:22,  52:12, 56:16,  72:21, 87:5,</p>	<p>99:9.  depending 5:3,  5:4, 9:19,  39:14.  depends 17:8.  depict 34:10.  deprived 17:4.  DEPT. 1:2.  describe 110:2.  described 56:22,  81:5.  desire 15:13.  despite 79:25.  detailed 5:7.  details 15:6,  51:14, 57:9,  84:16, 113:1.  Detective 37:19,  39:5, 39:20,  39:21, 40:7,  40:12, 41:1,  48:1, 48:5,  48:7, 54:6,  54:21, 55:4,  60:5, 60:25,  61:5, 61:21,  62:11, 62:15,  63:14, 64:4,  64:5, 66:3,  71:9, 71:25,  80:23, 80:24.  Detectives 34:12,  36:1, 36:15,  37:13, 47:23,  56:14, 67:23,  81:7, 83:4.  Detention 88:7.  determination  9:8.  determined 35:21,  79:19.  develop 49:7.  dialogue 79:10,  81:16.  Dicaro 54:6,  54:21, 55:4,  60:25, 66:3,  66:7, 71:17.  difference 4:12,  4:20, 5:6, 15:3,</p>
--	--	--

23:13, 95:5.  
differences  
68:21.  
different 14:2,  
18:2, 67:9,  
80:16, 103:8.  
difficult 59:3,  
59:6, 102:4.  
difficulty  
51:25.  
dinner 97:20,  
109:10, 110:1.  
dinners 109:19,  
109:23, 111:7.  
DIRECT 3:7, 3:13,  
17:6, 17:9,  
27:2, 85:25.  
directing 97:5.  
direction  
117:15.  
directly 24:21,  
82:4, 90:25,  
114:15.  
disagree 18:5.  
disclose 45:1,  
45:4.  
disclosure  
35:17.  
discretion 6:12.  
discuss 56:5,  
56:24.  
discussed 74:25,  
83:17.  
discussing  
14:12.  
Discussion 4:7,  
5:1, 5:4, 5:7,  
5:14, 5:17,  
7:23, 9:7, 9:8,  
9:11, 9:14,  
9:20, 9:22,  
17:17, 18:9,  
25:12, 34:24,  
50:16, 72:11,  
77:4, 81:18,  
84:3.  
discussions 8:4,  
68:21, 99:21.  
dispute 4:22,  
11:5.

distance 79:7.  
distinction  
55:15.  
distributed 7:1.  
District 1:5,  
1:25, 88:24,  
88:25.  
division 27:13,  
64:13, 83:19,  
83:25.  
divisions 81:2,  
82:22, 83:20,  
83:22.  
document 5:12,  
32:16, 33:10,  
34:6, 55:6,  
62:9, 69:20,  
70:13.  
doing 13:20, 20:2,  
79:23, 89:21,  
89:22, 90:4,  
96:21, 97:21,  
111:18, 113:3.  
don'ts 5:11.  
done 7:11, 10:7,  
13:16, 15:2,  
33:15, 48:15,  
54:22, 55:4,  
57:4, 66:13.  
door 10:19, 12:6,  
23:4, 78:12.  
Douglas 22:11.  
down 8:1, 82:14,  
83:10, 84:19,  
86:7.  
Downtown 27:21.  
draft 32:1,  
57:3.  
draw 82:2.  
drive 107:4.  
drop 77:24, 78:8,  
78:15, 103:7,  
111:15.  
drug 87:19.  
drugs 95:1,  
105:19,  
105:22.  
During 48:9,  
49:18, 56:4,  
66:16, 75:12,

75:16, 88:11,  
97:3, 98:20,  
99:7, 99:14,  
104:24, 105:1,  
105:14, 105:18,  
106:12, 110:3,  
110:11, 110:20,  
115:24, 116:3.  
dust 18:13.  
duty 11:3.  
.  
.  
< E >.  
e-mail 34:11,  
48:24, 61:14,  
61:17, 61:19,  
62:6, 62:10,  
66:21, 72:1,  
76:25.  
Early 4:5, 4:7,  
36:18, 74:13.  
easier 67:18.  
eat 100:21.  
effort 25:22,  
37:24, 79:7.  
efforts 45:18,  
46:17, 94:21.  
either 6:24,  
42:14, 94:4,  
98:5.  
element 17:25.  
elevated 79:18.  
elicit 30:6,  
76:13.  
elicited 9:15,  
20:20, 77:6.  
eliminates 15:9.  
email 62:18.  
emotional 113:3,  
113:5.  
employed 27:4,  
57:15.  
employee 29:12,  
29:15, 37:8,  
41:25, 43:17,  
70:25.  
employees 28:21,  
31:5, 35:12,  
46:11, 46:14,  
56:6, 74:13.

<p>employment 45:4, 58:13, 76:15. encompassed 111:23. encouraged 58:12. end 27:25, 33:17, 47:12, 54:3, 54:5. enforce 78:18. enforcement 42:5, 46:4, 68:2, 73:17, 73:21, 74:11, 108:16. enough 25:18. enrolled 87:8. entailed 43:13. Enterprise 29:2, 30:24, 44:3. entire 80:8. entirely 81:11. entirety 14:9, 34:8. Eric 28:11. ESQ 2:2, 2:3, 2:5, 2:6. essentially 6:8, 80:19, 83:15. established 78:11. estimate 103:1. estimation 85:3. et 81:8. ethical 11:4. evening 115:11. event 70:5, 70:6, 70:14. events 106:1, 108:3. Eventually 41:4, 43:2, 45:9, 45:14. Everything 11:8, 12:21, 19:21, 40:14, 70:1, 86:7, 116:16. evidence 5:8, 6:16, 10:20, 13:17, 14:9, 14:10, 14:23,</p>	<p>20:22, 23:15, 25:17. evolution 25:25. evolved 14:22. exact 40:5, 44:15, 67:25, 114:21. exactly 74:10, 103:22. exam 21:25, 22:1, 76:2. EXAMINATION 3:7, 3:9, 3:13, 20:21, 27:2, 68:17, 85:25. exception 30:6. excited 90:6. excused 26:3, 75:8. executive 56:15. exercise 53:2. exhibit 5:13, 35:1, 62:1, 62:4. exhibits 116:16. exist 18:15. expectation 78:19. expected 78:20. expense 8:6, 9:3. experience 40:18. Explain 14:11, 19:21, 38:7. Explorer 41:21, 98:16, 99:13, 99:15, 104:23, 105:15, 107:25, 108:4, 108:7, 111:6. expose 8:22. exposure 11:13, 15:12, 16:20, 18:20. express 30:16, 75:21, 108:15, 116:8. expressed 30:13, 108:13. extend 107:3.</p>	<p>extent 5:8, 7:17, 8:7, 9:8, 18:20, 20:11, 22:7, 79:15. extra 53:2, 96:4. extremely 113:5. extrinsic 84:13. eyes 95:18, 95:23. . . &lt; F &gt;. face-to-face 86:19. Facebook 94:10. fact 5:20, 10:22, 10:23, 12:22, 13:17, 14:24, 21:21, 54:11, 61:5, 64:21, 65:4, 66:24. factors 18:3. facts 14:8, 14:13, 16:7. fair 36:22, 60:8, 61:14, 87:14, 111:2, 113:2. fairly 34:10, 51:9. fairness 79:1. faith 82:24, 83:20. fall 56:21, 91:9, 91:10, 91:16, 92:23, 92:25, 93:9, 95:25. false 57:22, 57:24, 65:24. familiar 14:13, 16:7, 28:14. Family 31:12, 31:19, 31:22, 34:12, 34:13, 36:2, 40:25, 41:2, 44:25, 52:8, 52:10, 100:11, 109:11, 109:19, 109:23, 109:25, 111:7,</p>
---	--	--

<p>113:19.  far 8:8, 9:15,  15:3, 15:11,  79:16, 79:19,  82:10.  Fargo 39:1.  father 16:4,  69:5.  fault 8:18.  favors 114:2.  FBI 72:8, 76:11,  76:18, 77:5,  80:10, 80:18,  82:12, 83:3,  83:7, 84:8.  federal 11:12,  15:12, 16:17,  16:19, 18:21,  73:20, 82:20.  feel 49:20,  95:10.  felt 8:14,  80:15.  female 112:11.  fertile 82:11.  few 28:7, 36:16,  69:2, 94:18.  field 4:8.  Fifth 16:8, 16:10,  18:16, 18:23,  19:5, 20:8,  20:13, 22:13,  24:16.  figure 4:8,  8:17.  figuring 76:4.  file 87:2.  filed 12:3.  final 9:7.  finally 75:23,  116:10.  find 8:16, 20:19,  26:1, 93:25.  findings 53:18,  56:5, 56:25.  Fine 18:7, 18:25,  29:25, 33:8,  33:12, 80:5.  finish 46:8,  115:4.</p>	<p>finished 71:17.  fired 73:9.  First 11:24,  15:23, 16:2,  31:17, 35:13,  56:4, 88:17,  90:18, 91:8,  94:4, 94:8,  95:11, 95:14,  95:15, 95:25,  97:15, 97:16,  97:21, 98:5.  five 19:18.  flagged 25:2.  fled 78:6.  floor 68:8,  68:11.  focusing 97:15.  follow 46:16,  59:4, 59:7,  71:5, 77:3.  following 91:24.  football 7:1.  foregoing 117:11,  117:15.  foremost 90:18.  foreseen 25:23.  forget 114:24.  forgive 52:11.  forgotten 51:13.  form 53:4, 55:17,  59:13, 75:21,  76:2, 77:13,  107:1, 116:8.  forth 112:25,  117:12.  forward 26:16,  83:15, 85:14.  foundation 42:19,  61:23, 62:7,  97:8, 97:11,  110:17.  foundational  102:6.  frame 33:16,  105:14, 110:3.  frames 4:15.  Francisco 100:8,  100:14, 101:3.  Franco 4:12, 4:21,</p>	<p>5:22, 6:21,  6:25, 7:10,  7:19, 7:25,  8:25, 9:2, 9:16,  12:4, 13:2,  15:6, 18:2,  19:3, 24:1,  25:16, 25:24.  free 49:20.  freshman 4:19,  4:22, 5:21,  5:22.  Friday 115:18.  friend 101:15.  friends 98:16,  98:22, 101:13,  102:11.  friendship 112:10,  112:11.  front 25:20,  38:16, 49:13,  86:6, 90:25,  108:19.  full 25:9,  80:17.  function 93:14,  94:6.  .  .  &lt; G &gt;.  games 105:23.  gang 29:15, 41:25,  42:2, 81:2.  gangs 82:22.  gave 6:25, 15:7,  39:21, 82:11.  gay 106:7,  106:11.  general 58:12.  Generally 107:2.  generated 66:2.  gentlemen 26:6,  75:12, 86:9,  115:24.  gets 8:22, 19:6,  70:8, 70:12,  111:15.  getting 63:22,  70:24, 73:9,  82:8, 90:2.</p>
---	--	--

<p>gifts 113:20.  girl 30:21.  girls 105:22,  106:5, 109:15.  give 21:3, 26:19,  39:20, 43:11,  67:20, 74:18,  79:12, 85:17,  103:1, 105:25,  107:8, 107:14,  109:3, 114:18,  115:19.  given 6:4, 7:5,  9:17, 20:5,  25:1, 40:7,  65:5, 81:13,  114:20.  giving 109:8,  115:1.  goals 105:2,  105:7, 105:9.  God 26:21,  85:19.  grader 14:25.  graders 94:7.  grades 92:18.  graduating 90:7.  graduation 8:2.  grandparents  113:19.  grant 16:16,  18:24, 19:10,  19:15.  granting 111:6.  grateful 15:20.  Gray 80:24,  91:1.  greater 82:21.  grew 8:13.  group 98:18,  98:22, 98:23.  guess 12:3, 16:17,  20:2, 22:22,  25:23, 106:8.  guy 41:23.  .  .  &lt; H &gt;.  half 21:15.  handling 54:5.</p>	<p>hands 31:4, 56:3,  75:6, 75:8.  Hang 78:22,  95:12.  happen 18:18,  25:21, 98:6,  114:3.  happened 17:23,  53:25, 72:6,  79:25, 96:18,  101:20.  happening 79:10.  harassing 36:12.  harassment 37:1,  37:3.  harder 78:17.  he'll 19:11.  headed 30:3.  hear 9:24, 20:17,  86:8, 86:9,  86:10.  heard 14:5, 14:6,  52:4, 65:1.  hearer 29:23.  hearing 13:25,  14:2, 110:16.  hearsay 29:22,  30:4, 30:6,  30:8, 34:19,  51:22, 52:18,  52:19, 58:24,  59:14, 64:24,  65:7, 76:3.  heavy 36:16.  held 34:24, 50:16,  72:11.  help 18:11, 26:20,  85:18, 94:10,  94:11.  hereby 117:9.  heroin 87:16.  High 7:2, 11:9,  89:19, 93:3,  105:24.  high-profile  36:16.  history 90:18.  hold 36:13.  holding 14:20.  home 86:22, 90:1,</p>	<p>97:1, 97:3,  97:16, 97:20,  98:21, 102:11,  107:1, 107:4,  107:9, 112:20,  114:23.  homecoming  105:23.  Hone 35:23.  Honor 9:25, 11:18,  16:16, 26:14,  78:5, 79:20,  79:21, 80:3,  91:6, 92:5.  HONORABLE 1:24.  hoping 15:22.  hospitalizations  90:8, 90:15.  Hotel 107:21,  107:23.  hour 21:15.  hours 108:8.  house 78:11,  78:13, 87:10,  98:2, 98:13,  98:17, 103:9,  103:10, 108:7,  109:4, 109:5,  109:7, 109:9,  113:19, 114:19,  114:20.  household 100:2.  Howard 1:34,  117:27.  hypothetical  18:19.  hysteria 9:5.  .  .  &lt; I &gt;.  IA 73:8.  IAB 29:10, 36:7,  37:24, 40:22,  63:10, 67:21,  80:10, 81:2,  81:5, 81:12,  81:24, 82:7,  82:23.  idea 8:11, 33:6,  41:19, 58:16,</p>
--	--	---

<p>74:24.  identification 91:3.  identified 56:18, 61:7.  illegal 65:20.  images 16:9.  immunity 9:10, 16:17, 17:20, 18:6, 18:24, 19:10, 19:15, 25:1.  immunize 24:24.  impart 94:20.  impeach 13:7, 80:12.  impeachment 24:20.  impermissible 52:3.  implicate 8:8, 9:9.  implicated 9:18.  implicates 20:25.  implication 20:14.  implied 24:8.  imputed 82:7.  in. 7:10, 12:16, 12:17, 13:12, 26:2, 46:15, 80:3.  inappropriate 30:21, 36:9, 50:3, 50:12, 50:19, 51:1, 51:20, 52:17, 52:25, 53:18.  included 4:24.  includes 87:16.  including 34:13, 75:14, 75:19, 81:2, 82:22, 116:1, 116:6.  Inclusive 9:7.  Inconsistent 51:6, 59:18.  incriminate 11:1.</p>	<p>Index 3:17.  indicate 59:9.  indicated 30:2, 58:20.  individual 6:14, 15:23.  individually 60:8.  individuals 5:5, 82:7.  indulgence 45:7, 68:13, 72:24.  influence 97:4.  influenced 24:10.  inform 64:21.  information 4:14, 14:15, 15:21, 22:8, 30:23, 31:13, 35:12, 35:14, 40:7, 45:1, 46:5, 49:10, 63:19, 65:5, 66:2, 74:18, 75:19, 77:15, 80:12, 84:7, 84:10, 94:12, 94:21, 116:6.  informed 78:10, 83:2, 93:4.  informing 64:20.  initial 7:22.  initially 28:18.  initiating 32:25.  inquire 14:17.  inquired 79:14.  inquiry 14:21, 29:7, 76:10, 79:2, 79:17, 79:19, 82:3, 83:11, 84:5, 84:12, 84:19, 85:5, 115:9.  inside 24:3, 49:11, 57:21.  instead 5:21, 33:3.  instructions</p>	<p>115:14,  115:18.  intend 21:20, 25:2.  intended 5:12, 23:16.  intensive 37:22.  intent 20:5, 20:9.  intention 11:24, 80:14.  interact 96:13.  interaction 41:20, 70:22, 75:3, 112:5, 113:7.  interactions 113:16.  interest 8:25, 13:25, 47:15, 108:13, 108:16.  intermission 25:16.  internal 27:15, 28:1, 28:17, 28:20, 28:24, 31:15, 34:13, 37:4, 44:5, 45:12, 45:18, 45:22, 46:10, 47:10, 47:23, 53:14, 53:21, 54:18, 56:4, 56:14, 56:15, 67:2, 73:14, 73:24, 74:7.  internet 75:20, 116:7.  Intervention 74:13.  interview 35:20, 36:3, 36:21, 39:6, 39:10, 39:13, 39:14, 40:1, 41:5, 41:7, 52:24, 54:11, 60:18, 63:23.  interviewed 39:12, 39:24, 44:24,</p>
---	---	---



52:8, 54:24,  
60:14, 82:12,  
82:24, 83:2,  
83:4, 83:5,  
83:7, 84:7.  
interviews 35:10,  
39:12, 55:6,  
71:19, 71:20.  
introduce 22:19.  
introduced 9:1,  
13:17, 93:17,  
93:18.  
introducing 13:13,  
35:2.  
introduction  
93:14, 94:8.  
investigated 35:8,  
73:24, 83:2.  
investigating  
70:1.  
investigations  
28:20, 31:5,  
73:9, 73:14,  
73:15.  
investigative  
38:15, 45:3,  
46:8, 46:12,  
68:1.  
investigator  
78:10.  
invited 113:18.  
invocation 20:4,  
20:8, 20:25,  
25:19.  
invoke 17:9,  
21:10, 21:13,  
21:21, 22:17,  
22:18, 23:5,  
23:7, 23:9,  
25:5.  
invoked 22:9.  
invokes 17:6,  
21:7, 22:8,  
22:22.  
invoking 17:11,  
23:10.  
involuntary 7:5,  
7:6.  
involve 51:2.  
involved 16:2,

30:20, 43:15,  
44:5, 56:13,  
64:7, 66:21,  
69:17, 76:9,  
77:13, 79:8,  
80:2, 80:3,  
82:4, 87:19,  
96:1, 99:8.  
involvement 28:19,  
31:22, 31:24,  
77:5, 87:25,  
96:6, 96:9,  
99:11.  
involves 83:20.  
involving 28:13,  
62:10.  
Ish 68:5.  
issue 6:22, 6:23,  
10:17, 15:2,  
16:22, 20:10,  
24:7, 24:13,  
24:14, 29:20,  
30:5, 48:10,  
49:5, 66:14,  
68:10, 81:21,  
82:19, 83:17.  
issues 19:6,  
23:19, 24:20,  
50:7, 50:10,  
50:19, 51:2,  
58:2, 70:23,  
79:3.  
.  
.  
< J >.  
January 89:23.  
Jeffrey 29:6,  
44:4.  
jeopardize  
81:17.  
job 74:9.  
Johnson 93:3,  
93:7, 104:9,  
104:15, 106:16,  
115:4.  
JONATHAN 2:6.  
JOSEPH 3:12.  
Joshes 56:18,  
109:4, 109:6.  
Joshua 1:17, 24:9,

26:7, 28:13,  
29:13, 44:24,  
105:18.  
Journal 80:21.  
Judge 1:25, 5:18,  
59:18, 68:15,  
73:7, 80:7,  
86:9.  
jump 113:21.  
June 57:18, 71:21,  
71:23, 72:5,  
86:18, 91:15,  
92:8, 100:15,  
101:2.  
Junior 5:23, 15:1,  
93:3.  
jurisdiction  
39:24.  
juror2 26:4.  
jurors 4:6, 11:25,  
21:16, 26:9,  
75:7, 84:23,  
115:12,  
115:15.  
JURY 1:14, 25:20,  
67:20, 75:11,  
86:9, 115:14,  
115:23.  
.  
.  
< K >.  
Karen 28:10,  
44:11, 47:16,  
48:10, 48:25,  
49:4, 53:22,  
62:6, 67:12,  
72:15, 72:19,  
74:25, 76:23,  
76:24, 77:5,  
77:7, 77:21,  
78:14, 78:17,  
79:7, 79:18,  
80:22, 81:3,  
81:21, 82:20,  
83:8, 83:23,  
84:9, 84:12,  
84:20.  
KATHLEEN 1:24.  
keep 21:13, 38:7,  
91:25, 94:11,

<p>95:1, 95:2.  kept 11:2, 78:18,  104:6.  Kevin 66:22.  key 114:18,  114:19, 114:20,  114:21, 115:1.  keys 114:23,  114:24.  kid 109:18.  Kids 94:10, 94:20,  95:1, 95:12,  95:19, 106:3.  kind 10:5, 35:9,  36:25, 37:9,  57:21, 70:7,  87:19, 90:17,  93:13, 93:14,  95:22, 98:1,  108:12.  kinds 109:8.  knowledge 10:22,  12:5, 12:11,  12:13, 12:14,  14:19, 76:11,  76:19, 97:7,  110:18.  known 4:12, 7:19,  25:8.  knows 7:19, 8:25,  19:20, 20:2,  75:2, 80:18,  110:15.  KRISTINA 2:3.  .  .  &lt; L &gt;.  lab 29:1.  labor 37:21.  Lack 86:25,  97:6.  ladies 26:6,  75:12, 86:8,  115:24.  lady 86:7.  laid 97:12.  Larkin 43:5.  Las 4:1, 27:5,  27:7, 56:15,  72:20, 80:21,</p>	<p>87:4, 89:11,  99:9, 110:9.  last 4:11, 8:13,  40:17, 44:14,  44:21, 69:6,  69:7, 76:9,  86:19, 87:7,  88:3.  late 36:18, 86:21,  86:24, 91:9.  later 38:3.  latitude 81:13.  law 17:7, 21:12,  21:18, 22:10,  42:5, 46:3,  68:2, 73:17,  73:21, 74:11,  108:16.  Lawrence 44:1.  lawyer 20:6.  lawyers 75:14,  116:1.  lead 31:15.  leading 42:18,  102:2.  leads 63:19.  learn 40:1, 41:4,  43:2, 43:7,  45:9.  learned 79:23,  80:1.  least 61:2, 87:18,  114:22.  leave 46:13,  83:25, 114:23.  leaving 108:15.  led 51:2, 95:16.  left 36:10, 46:5,  73:3, 81:3,  87:10, 98:25,  101:8.  legal 6:15, 7:7.  lei 42:15.  length 108:6.  Less 19:6, 68:3,  80:19, 103:2,  103:3.  letting 103:16.  level 19:17,  73:21.</p>	<p>liability 7:7,  8:9, 8:18, 8:20,  9:9.  liable 17:23.  liaison 29:3,  30:24, 44:3,  69:22.  lieu 73:25,  81:4.  Lieutenant 28:8,  28:10, 31:25,  43:5, 44:12,  47:16, 67:12,  67:15, 72:15,  72:19, 76:14,  76:23, 76:24,  77:21, 77:23,  78:14, 78:16,  79:7, 79:18,  80:22, 81:21,  83:23.  Lieutenants 28:11,  67:13, 67:23.  life 66:1,  105:2.  light 9:5.  lights 78:13.  likely 39:15,  115:17.  limitation 6:20,  75:14, 75:20,  116:1, 116:7.  limitations 10:2,  11:7, 15:11,  25:3.  line 5:15, 38:4,  42:20, 76:4,  82:2, 84:5,  84:19, 115:9.  lines 82:18,  102:5.  listen 75:17,  116:4.  listened 80:4.  Little 4:5, 7:25,  67:17, 67:18,  80:19, 86:8,  88:9, 90:17,  102:23.  live 36:5, 89:7,</p>
---	---	---

<p>100:2, 110:9.  lived 114:25.  Lloyd 28:11.  load 36:16.  logical 12:8.  Lombardo 81:1.  long 25:7, 27:10,  27:16, 47:9,  51:10, 88:8,  102:23, 103:19,  104:6, 112:7.  longer 12:19,  46:14, 46:15,  47:18, 48:7.  look 32:15,  92:18.  looking 9:10,  13:5, 33:14,  95:9.  looks 31:10.  lot 37:20, 51:15,  67:16, 95:18,  102:1, 105:12.  Lots 73:19.  Luann 56:18, 57:5,  58:12.  .  .  &lt; M &gt;.  M-a-r-s-h 27:1.  ma'am 30:10.  maintained 48:3.  male 112:11.  malicious 12:25.  man 25:17, 28:13,  81:11, 82:23,  83:5, 95:9.  manual 37:12.  March 32:7, 33:17,  36:18, 47:13,  52:9, 53:7,  53:11, 54:19,  55:1, 68:10,  71:11, 89:24,  90:12.  marked 34:5.  marks 71:15.  maroon 91:1.  married 70:6.  Marsh 3:6, 26:15,</p>	<p>26:25, 47:5,  66:13, 71:9,  72:7, 76:2,  76:10, 77:2,  77:13, 79:15,  80:15, 81:5,  84:5.  Marshes 79:4.  match 52:2,  52:4.  material 24:21.  math 5:21.  matter 5:5, 65:11,  77:3, 77:9,  80:20, 82:25.  matters 74:25.  Mcgrath 34:20.  MCNEILL 2:5,  10:18, 12:5,  12:15, 13:4,  17:3, 17:14,  20:16, 21:4,  21:5, 22:11,  23:6, 23:13,  77:21, 78:5,  79:3, 79:20,  97:6, 102:1,  110:15.  mean 55:18, 69:25,  93:15, 95:5,  114:17.  means 21:7.  medium 75:19,  116:6.  meet 88:21, 88:22,  91:8, 93:1,  93:5.  meeting 31:25,  60:20, 89:4,  108:7, 108:12.  meetings 99:15,  104:24, 105:16,  108:1, 108:4,  108:10, 111:7.  members 7:1.  memo 70:25.  memory 32:23,  68:22.  mentioned 24:4,  37:13, 77:24,</p>	<p>80:23.  met 41:23, 47:7,  49:4, 88:17,  91:16, 92:23,  93:3, 93:5,  93:12, 93:24,  94:18, 95:6,  96:17, 96:18.  Metro 13:24,  27:10, 37:10,  41:21, 44:14,  47:18, 56:6,  57:15, 57:21,  58:13, 61:3,  70:13, 72:16,  73:18, 76:16,  80:17, 80:22,  81:2, 81:3,  82:22, 105:5,  105:11,  105:12.  Metropolitan 27:6,  27:8, 56:16,  72:20, 87:4,  99:9.  mic 86:6.  mid-year 96:25.  Middle 27:23,  72:2, 91:18,  93:7, 93:21,  93:24, 93:25,  94:6, 95:3,  104:9, 104:15,  106:16, 115:5.  mind 113:15.  minds 40:20.  Minnesota 89:10,  100:10, 100:14,  101:3, 102:11,  102:19, 103:5,  103:19.  minor 5:3,  15:16.  minute 24:13.  minutes 19:18,  19:23, 25:11,  75:24, 84:25.  mischaracterizes  48:12, 58:5.  misconduct 28:21,</p>
---	---	---

<p>69:14.  mislabeled 52:11.  missed 5:16.  missing 87:2.  Mizerockin 74:14.  mobile 27:19.  mom 64:16, 104:19,  109:17, 110:25,  112:4, 112:9.  MONIQUE 2:5.  monitor 96:10,  104:12.  monitored 94:10.  month 27:11, 72:4,  100:16, 111:5.  months 15:4,  27:17, 47:11,  114:22.  moot 20:22, 22:24,  23:12.  mother 8:12, 9:4,  9:12, 36:11,  36:14, 104:15,  104:17.  motion 10:7, 12:4,  14:16, 20:21,  20:23, 22:24,  23:11.  motive 12:24,  13:11, 14:6,  24:21, 65:10,  77:8, 79:4,  79:5, 79:25.  move 23:21, 24:10,  34:16, 84:3.  movie 100:21.  movies 98:23.  moving 115:9.  MPR 80:21.  multiple 10:21,  13:13, 60:1,  76:1, 82:22.  myself 64:11.  .  .  &lt; N &gt;.  nail 8:1.  naked 6:25.</p>	<p>NAME 3:6, 3:12,  26:23, 28:13,  54:6, 56:20,  76:24, 80:23,  85:21, 86:13,  104:19,  104:20.  narrative 47:15.  nature 6:22, 10:6,  10:14.  nearby 78:17.  neat 84:9.  necessarily 14:5,  69:25.  need 11:15, 14:5,  23:9, 25:13,  33:7, 33:13,  40:13, 42:19,  49:19, 55:12,  59:22, 75:24,  76:8, 82:15,  97:9, 115:15,  116:13,  116:16.  needed 113:20.  needs 7:15, 33:2,  115:16.  Nevada 1:6, 1:9,  4:1, 26:7, 85:9,  117:9.  new 102:5,  115:9.  newspapers 75:20,  116:7.  next 5:14, 25:21,  26:11, 29:19,  30:3, 30:8,  85:12.  NIA 79:6.  nice 86:7,  95:22.  night 4:11, 8:13,  96:14, 116:11.  No. 1:1, 1:2,  1:34, 23:6,  38:10, 52:10,  57:2, 61:11,  72:4, 74:2,  95:15, 103:9,  112:24.</p>	<p>nobody 78:12.  None 110:8,  111:22.  nor 81:20.  normal 37:19.  Northeast 58:3.  noted 33:11.  notes 100:18,  100:20.  Nothing 12:21,  26:20, 39:11,  64:15, 74:21,  83:1, 83:14,  85:18, 115:1.  Notion 71:4.  November 6:2, 6:4,  58:20, 94:17.  nude 12:23, 24:5,  24:15.  nudity 16:9.  number 62:2, 62:3,  70:5, 70:6,  70:8, 70:12,  70:14.  numbers 67:25,  70:14.  numerous 64:16.  .  .  &lt; O &gt;.  Oasis 7:2.  oath 6:24, 49:3,  58:1.  object 29:22,  34:18, 84:20,  102:1.  objections 76:3,  76:4, 76:7,  82:16, 117:13,  117:16.  obligation  46:23.  observations  97:9.  obvious 95:5.  occasions 98:12.  occupants 78:14.  occupied 78:13.  occur 10:16,  20:13.</p>
--	--	---

occurred 4:18,  
     36:10, 79:9.  
 occurs 22:1.  
 October 5:25,  
     6:1.  
 offer 18:6, 38:8,  
     56:11, 113:7.  
 offered 12:13,  
     30:7, 59:17,  
     65:8, 79:3.  
 office 11:20,  
     27:14, 40:11,  
     88:24, 88:25.  
 Officer 16:5,  
     26:15, 30:8,  
     43:19, 43:22,  
     66:16, 66:20,  
     67:1, 67:2,  
     105:5, 105:11,  
     105:12.  
 officers 10:25,  
     13:11, 84:17.  
 often 98:6,  
     110:11.  
 Okay 16:13, 19:24,  
     22:16, 28:12,  
     32:21, 60:21,  
     72:18, 72:23,  
     82:9, 85:8,  
     86:5, 107:6,  
     109:24,  
     112:17.  
 old 59:11, 86:15,  
     91:10, 91:20,  
     92:20, 99:22,  
     109:18, 111:2.  
 older 6:21.  
 Once 22:8, 39:14,  
     40:6, 45:20,  
     64:17, 69:21,  
     80:13, 98:10,  
     108:5.  
 one. 12:15,  
     73:10.  
 ones 22:25, 23:16,  
     77:3.  
 ongoing 55:24,  
     80:22.  
 ongoings 56:25.  
 open 46:13.

open-ended  
     102:7.  
 opened 10:19,  
     12:6, 23:4,  
     35:5, 69:9.  
 opening 24:8,  
     69:24, 70:13,  
     76:25, 77:2.  
 opens 7:7.  
 opinion 75:22,  
     116:9.  
 opinions 17:18.  
 opportunity 48:18,  
     79:12.  
 order 24:24,  
     33:23, 48:11,  
     80:12.  
 ordered 48:25,  
     53:22.  
 ordering 77:10.  
 Orduno 4:8, 7:4,  
     7:24, 8:5,  
     10:12, 11:8,  
     11:17, 11:24,  
     13:19, 14:15,  
     14:18, 14:20,  
     15:1, 19:15,  
     24:2.  
 organized 81:6.  
 orient 97:10.  
 originally  
     23:12.  
 others 50:13.  
 otherwise 76:16.  
 ourselves 20:19,  
     26:1.  
 outcome 17:18,  
     32:2.  
 outside 36:3,  
     46:14, 56:12,  
     82:18, 96:17,  
     96:18.  
 outstanding  
     10:16.  
 overall 76:12.  
 overlaps 22:5.  
 overrule 48:21.  
 Overruled 30:9,  
     42:19, 51:8,  
     65:14, 73:6.

own 5:21, 13:15,  
     95:12, 106:10.  
 .  
 .  
 < P >.  
 P-a-m 85:23.  
 PAGE 3:6, 3:12,  
     3:16.  
 Pam 36:24, 38:19,  
     39:6, 39:10,  
     39:20, 39:24,  
     52:7, 53:7,  
     60:1, 60:11,  
     63:12, 64:9,  
     65:4, 65:10,  
     65:19, 66:7,  
     85:13, 85:14,  
     85:23.  
 Pamela 36:11,  
     36:14, 37:24,  
     51:17, 62:11,  
     62:12, 62:16,  
     64:21.  
 paraphrasing  
     40:14.  
 Pardon 105:8.  
 parent 95:10,  
     95:17, 100:2.  
 parenting 64:22,  
     65:20.  
 parents 7:19,  
     109:5, 109:6,  
     109:9.  
 part 5:14, 8:20,  
     9:10, 28:25,  
     45:4, 48:14,  
     61:21, 63:22,  
     64:8, 83:5,  
     83:12, 83:22,  
     84:18, 98:5,  
     99:13.  
 part-time 29:15.  
 part-timer 45:5.  
 participated  
     62:17.  
 participating  
     63:15, 108:16.  
 particular 29:12,  
     37:21.  
 parties 75:14,

<p>116:1. party 108:24, 108:25, 114:2. pass 47:1. passed 69:5. past 21:15, 51:16. path 24:23. patience 26:10, 86:3. pattern 87:22, 102:17, 112:24. pause 48:16, 70:10. pending 32:2, 45:19. penetration 6:14. people 34:19, 55:5, 56:10, 56:11, 67:21, 68:4, 69:16, 83:21, 108:21. per 111:9, 111:10. perceived 70:20. perception 106:8, 106:10. performance 29:20, 30:13, 50:7, 50:19, 51:2. perhaps 4:20, 78:25, 79:4, 79:23. perimeter 20:3. perimeters 14:12, 43:9, 80:15, 82:13. period 89:25, 90:9, 94:17, 95:25, 103:20. Permission 33:8, 33:18, 100:20, 107:3, 107:8, 107:14, 107:17, 107:20, 108:9, 109:4, 109:9, 109:10, 111:6, 111:20,</p>	<p>111:23. permit 110:20. permitted 43:7. perpetrator 6:13. person 38:8, 54:5, 54:8, 57:21, 64:2, 75:18, 87:2, 116:5. Personal 41:14, 46:4, 60:6, 97:6. personally 62:18. perspective 112:4. ph 67:17, 67:19, 68:3, 74:14, 104:21. phone 29:3, 29:6, 29:14, 29:18, 35:19, 51:10, 61:8, 88:12, 88:13, 88:15, 90:2, 101:11, 112:3. photograph 108:21. photographs 16:9, 16:20. photos 11:9, 18:15, 18:16, 18:21, 18:22, 19:4, 19:5, 24:5, 24:15. pick 93:6, 103:8, 107:15, 107:17, 107:20, 108:9, 111:15. picked 44:7, 49:16, 103:11, 103:14. picking 93:16, 97:20, 106:12, 106:15, 109:18, 111:11. picture 108:19. pictures 6:25, 11:14, 12:23, 22:4, 22:15,</p>	<p>25:5. piece 12:16. pierce 12:12, 13:16. place 15:7, 94:15, 96:5, 98:2, 115:8, 117:12. places 100:11. Plaintiff 1:11. planet 25:4. plans 102:10. play 15:17, 25:4. played 13:14, 81:10. playing 4:8. Please 26:16, 48:15, 52:11, 59:23. Plus 37:19. point 20:3, 22:24, 31:2, 31:3, 31:22, 32:1, 35:7, 35:9, 36:13, 36:15, 39:9, 39:11, 40:15, 41:14, 47:15, 49:18, 57:5, 61:3, 63:23, 80:25, 90:23, 94:4, 107:8, 107:13. point. 12:9, 17:5. points 23:21, 83:13. Police 12:22, 13:11, 16:2, 16:5, 27:6, 27:8, 56:16, 72:20, 87:4, 99:9, 105:5. policy 37:10, 37:12, 54:16, 56:5. populate 69:16. porn 24:19. pornography 5:10, 10:1, 11:6, 15:12.</p>
---	---	---

<p>portion 44:12, 69:21, 100:13. posed 76:18. position 11:3, 13:23, 13:25, 17:20, 19:9, 22:16, 24:22, 25:17, 43:3, 82:19, 116:17. positions 105:19. possession 5:9, 11:6, 24:5. possibility 9:18, 15:9, 21:1. possible 10:2, 19:2, 21:24, 37:18, 51:15, 79:5, 81:11, 115:17. possibly 13:4, 19:6, 30:20. posture 23:3. pot 95:20. potential 8:9, 11:13, 13:2, 24:20, 56:10, 77:7. potentially 9:17, 9:21, 19:9, 24:15, 50:2, 64:22, 65:5, 65:20. potty 84:24. preconceived 17:18. preexisting 7:13. prejudice 82:17. presence 85:10. Present 4:6, 7:22, 7:25, 14:21, 15:18, 15:24, 26:8, 62:16, 62:17, 78:25, 80:8, 108:24, 113:7, 115:15. presented 10:19. presents 26:9. Pretty 16:7,</p>	<p>64:19, 90:4. prevent 21:18, 22:10. previous 80:9, 80:16. previously 9:17, 41:24, 71:10, 77:24. Prior 7:18, 10:22, 12:4, 12:11, 12:13, 14:16, 14:19, 27:12, 27:18, 27:20, 52:2, 69:9, 92:21, 108:12, 108:15. privilege 19:22. pro 8:17. probably 46:3, 94:16. problem 6:21, 9:3, 22:20, 58:13. problematic 17:5, 58:2, 58:8, 65:21. problems 58:4, 87:13. procedural 69:14. procedure 46:10. proceed 11:23, 15:22, 19:2, 30:11, 42:20, 55:16, 59:23, 115:21. proceedings 117:11, 117:13, 117:17. proceeds 46:24. production 96:5, 96:7. Program 43:10, 74:13, 99:13. progresses 16:20, 19:16. proms 105:23, 106:1. propensity 31:10. Proposed 32:12,</p>	<p>33:19, 34:5, 49:21, 49:23, 62:3. prosecute 16:23, 16:24. prosecuted 6:7, 6:18, 8:15, 10:3, 22:6, 23:16. prosecuting 12:23. prosecution 11:12, 12:25, 15:10, 16:17, 18:7, 18:14, 18:15, 18:20, 22:4. protect 8:25, 11:4, 21:8. protected 21:11. protection 20:13. protections 43:10, 43:17. proven 31:3. provide 9:10, 43:18, 55:25. provided 5:12, 14:23, 77:15, 83:24. provides 82:15. providing 77:8, 115:18. proving 84:13. publication 80:20. publicly 81:1. purported 10:13. purpose 12:18, 19:20, 20:20, 21:24, 29:7, 59:16. purposes 5:17, 14:19, 21:2, 23:11. Pursuant 17:12. pursue 36:12, 36:25. purview 46:15. put 9:19, 11:1, 15:2, 21:10,</p>
---	--	---

<p>21:12, 21:17,                  23:14, 23:16,                  36:13, 49:10,                  83:15.                  puts 11:3,                  40:22.                  Putting 17:5,                  21:6, 21:19,                  22:16, 22:17,                  23:6, 23:10,                  25:17.                  .                  .                  &lt; Q &gt;.                  quagmire 21:14,                  23:20.                  questioned                  109:22.                  questioning 8:1,                  8:8, 9:9, 10:12,                  10:15, 23:10,                  42:20, 49:7,                  49:18, 76:5,                  76:12, 77:6,                  102:5.                  questions 16:9,                  16:11, 17:1,                  17:6, 19:3,                  20:7, 20:11,                  21:6, 21:7,                  21:9, 21:20,                  21:24, 23:4,                  23:9, 29:4,                  52:1, 68:15,                  68:20, 68:24,                  72:13, 74:3,                  75:5, 75:7,                  80:9, 102:6,                  102:8.                  quibble 25:25.                  quick 25:23,                  93:13, 102:25,                  103:1.                  quit 46:11.                  quite 7:20.                  .                  .                  &lt; R &gt;.                  Rachel 39:5,                  39:16, 39:21,</p>	<p>40:2, 40:6,                  76:21, 77:17,                  79:17, 84:15.                  radar 109:17.                  radio 75:20,                  116:7.                  rails 90:5.                  Rainbow 39:1.                  raised 19:7.                  Rampart 107:23.                  ran 89:24,                  90:12.                  rank 48:3.                  rape 12:12, 12:16,                  12:17, 13:16.                  Rasmussen 7:14,                  7:16, 7:19,                  8:12, 11:11,                  11:18, 11:23,                  13:22, 16:1,                  17:16, 18:11,                  19:10, 19:19,                  20:2, 20:12,                  26:2.                  Rasmussen 7:9,                  7:21.                  rate 78:18.                  rational 105:25.                  reach 37:24, 88:4,                  88:6.                  reached 41:2.                  read 33:6, 33:8,                  36:4, 75:16,                  116:3.                  reading 33:3,                  33:9.                  ready 70:24,                  85:24.                  realigned 81:1.                  realize 7:21.                  Really 6:17, 6:22,                  6:23, 21:16,                  25:13, 37:17,                  43:9, 63:25,                  64:1, 65:17,                  81:16, 87:25.                  reason 5:24, 7:8,                  11:5, 15:18,                  15:19, 24:6,                  30:4, 67:1,</p>	<p>73:2, 78:5,                  78:21, 80:15,                  105:25, 115:9,                  115:13.                  reasons 97:19.                  recall 32:6, 38:8,                  42:11, 58:20,                  60:10, 64:20,                  66:22, 70:22,                  91:10, 99:12,                  101:20, 101:24,                  102:10, 102:15,                  105:11, 113:17,                  113:18.                  receive 28:16.                  received 29:5,                  30:23, 51:19.                  recess 19:24,                  19:25, 25:14,                  26:5, 75:10,                  75:12, 85:1,                  115:10,                  115:24.                  recognize 34:5,                  34:8, 51:6,                  54:6, 61:19,                  96:24, 108:21.                  recollection                  32:17, 33:3,                  33:6, 33:12,                  33:21, 33:24,                  38:9, 38:12,                  38:18, 50:21,                  51:17, 61:16,                  62:23, 92:18,                  103:13,                  113:22.                  recommendation                  18:23.                  recommendations                  57:10.                  reconcile 22:23,                  22:25.                  recontact 46:5.                  recorded 117:14.                  records 29:1.                  recourse 29:11.                  RECROSS-EXAMINATIO                  N 3:10, 71:7.                  REDIRECT 3:9,</p>
--	---	---



68:17, 71:6.  
refer 31:11, 38:3,  
38:5, 40:16,  
49:14, 49:19.  
reference 5:7,  
7:24, 21:21,  
75:4.  
referenced  
83:18.  
referred 31:11,  
32:18, 63:4,  
75:16, 112:21,  
116:3.  
referring 69:4.  
reflect 52:7,  
52:23, 62:10,  
91:3, 91:5.  
reflecting  
48:24.  
refrain 59:5.  
refresh 32:22,  
33:2, 33:5,  
33:20, 33:24,  
38:9, 38:11,  
38:12, 61:16,  
62:23, 92:17.  
refreshes 32:16,  
38:18.  
regard 4:24, 9:25,  
10:4, 20:19,  
76:10, 77:4,  
77:7, 77:16,  
79:4, 80:10,  
108:24.  
regarding 30:17,  
34:14, 42:10,  
43:20, 68:21,  
102:11.  
Regardless 10:11,  
23:3, 87:19.  
regards 18:25.  
regular 112:24.  
reinterviewed  
44:8.  
reiterate 84:6.  
related 4:16, 8:2,  
16:11, 76:2.  
relation 83:7.  
relationship 4:17,  
6:1, 7:14,

10:13, 14:18,  
14:24, 15:5,  
18:1, 18:2,  
18:21, 19:8,  
22:3, 30:22,  
36:9, 50:3,  
51:1, 51:20,  
52:17, 52:25,  
53:19, 58:22,  
59:10, 110:3.  
relative 104:15.  
release 11:16,  
58:3.  
Relevance 73:4,  
80:13.  
relevancy 82:15.  
relevant 12:9,  
12:10, 12:20,  
13:18, 59:16.  
remarks 9:20.  
remedy 23:17.  
Remember 29:5,  
40:4, 40:5,  
40:11, 44:15,  
51:10, 67:25,  
68:12, 68:23,  
71:1, 88:17,  
94:14, 102:17,  
104:20, 105:12,  
114:11.  
remind 33:4.  
renew 21:5.  
reopen 81:16.  
Rephrase 52:1,  
52:5, 53:5,  
59:4, 65:2.  
report 15:14,  
32:8, 33:16,  
36:12, 38:15,  
46:8, 46:12,  
49:8, 49:11,  
49:13, 52:7,  
52:19, 52:23,  
58:19, 59:9,  
67:14, 75:17,  
87:2, 116:4.  
REPORTED 1:34,  
42:4.  
REPORTER 117:3,  
117:8.

REPORTER'S 1:12.  
represent 8:6,  
9:3, 22:20.  
representation  
11:6.  
represented  
16:4.  
represents 7:10.  
request 63:24.  
requested 39:13.  
required 20:23,  
44:25, 45:4.  
requires 54:16.  
resign 43:5,  
73:25.  
resignation  
42:15.  
resigned 43:3,  
43:12, 45:22,  
81:4.  
responded 78:12.  
response 69:1,  
77:14, 109:24,  
109:25.  
responses 76:3.  
responsibilities  
29:21.  
responsible 28:24,  
36:22, 49:10.  
rest 18:17.  
restate 72:18.  
restroom 25:13.  
result 52:24,  
80:25.  
resulting 23:10.  
Resuming 26:7,  
85:9.  
retained 11:17.  
retired 57:17,  
72:22, 73:11,  
81:24.  
return 115:12.  
returned 116:16.  
revealed 49:7,  
52:16, 58:21.  
revert 40:8.  
Review 33:13,  
38:10, 38:17,  
80:21.  
reviewed 36:6,

<p>36:20.  RHOADES 2:3, 9:25,  16:16, 16:21,  17:10, 17:22,  18:24.  rid 70:20.  rights 11:4,  22:14.  Roberts 101:16,  101:25,  102:14.  role 35:22, 58:3,  81:9.  room 114:6,  114:16.  rough 69:2.  rubric 56:21.  rule 14:20, 20:23,  48:18, 84:11.  ruled 10:8, 10:16,  59:22, 81:17.  rules 37:12,  46:16.  ruling 76:7,  81:19.  run 11:7, 15:11,  71:19, 71:20,  86:25.  running 70:1.  .  .  &lt; S &gt;.  S-a-v-a-g-e  85:23.  Sacchetti 56:19,  57:6, 70:18.  Samples 44:1.  San 100:8, 100:14,  101:3.  satisfies 78:16.  satisfy 58:13.  saturation  27:19.  saw 87:7, 102:24,  113:2.  saying 17:10,  18:18, 22:16,  23:3, 79:22.  says 8:22, 17:7,  21:12, 39:15,</p>	<p>40:13.  scenario 16:5,  18:19, 22:10.  scenarios 6:3.  schedule 26:10.  scheduled 25:22,  42:14.  scheduling  115:16.  schools 7:3, 24:7,  24:10, 24:14,  95:19.  Scoot 86:7.  scope 56:17.  screen 108:19.  screening 18:4.  Sean 34:20.  seated 26:23,  85:21, 90:24,  90:25.  Secchetti 58:12.  second 48:15,  70:2, 71:13,  78:22.  seconds 88:10.  secretary  104:17.  section 27:9.  seduction 5:1,  6:9, 15:10.  Seeing 75:8, 83:8,  110:16.  seem 4:18, 4:21,  38:6.  seen 48:24, 83:15,  112:10.  selectively  12:22.  semester 97:15,  97:16, 97:21.  send 63:20.  senior 5:23, 15:2,  42:5, 68:3,  90:6.  sense 26:4, 33:10,  67:20.  sentences 70:25.  separate 15:24,  24:7, 43:6,  111:11.</p>	<p>separated 45:21,  72:20, 76:15.  sergeants 28:23,  67:22, 81:6.  served 78:1,  78:15, 78:18.  service 11:20,  37:11, 77:24,  77:25, 78:8,  78:9, 78:16.  session 50:11,  51:1.  set 33:6, 33:13,  41:5, 97:8,  117:12.  setting 31:8.  settles 18:13.  several 24:11,  37:13, 47:23,  81:1.  Sex 10:5, 10:9,  10:10, 10:20,  12:4, 12:14,  12:23, 13:6,  15:16, 18:22,  24:6, 24:19,  36:22, 51:18,  52:12, 53:7,  53:10, 63:4,  63:6.  sexual 4:25, 5:2,  6:8, 6:9, 6:13,  6:23, 10:4,  14:24, 15:10,  16:9, 16:12,  16:23, 17:23,  17:24, 18:25,  19:11, 19:16,  35:17, 36:9,  58:22, 59:10,  99:4, 111:23.  Shall 11:16,  26:19, 85:17.  shape 77:13.  share 113:1.  shared 11:9,  24:15, 57:9.  Sharon 1:34,  117:27.  Sharp 80:20,</p>
--	---	--

82:25, 83:1.  
 she'd 114:24.  
 sheet 33:3.  
 Sheriff 81:1.  
 shield 12:12,  
 12:16, 12:17,  
 13:16.  
 shift 27:23,  
 36:17, 67:7,  
 67:8.  
 shirt 91:1.  
 short 27:11,  
 103:20.  
 shortly 94:9.  
 show 75:6,  
 108:18.  
 showed 72:1.  
 Showing 32:11,  
 34:4, 92:13,  
 108:20.  
 shows 98:4.  
 shut 82:14,  
 83:9.  
 siblings 110:8.  
 side 21:23,  
 64:2.  
 significant  
 77:20.  
 similar 70:4,  
 70:7, 70:11,  
 70:13.  
 single 100:2.  
 sir 27:4, 47:8.  
 sit 98:3, 98:20,  
 99:24.  
 sits 69:22.  
 sitting 9:1,  
 21:23, 38:16,  
 40:11.  
 situation 70:5.  
 Sixth 17:4,  
 22:14.  
 skipping 95:20.  
 slash 43:5.  
 sleep 101:24.  
 smoking 87:23,  
 95:19.  
 SOC 29:11, 33:15,  
 69:19, 76:25,  
 77:2, 77:10.

sofa 98:3.  
 solely 71:18.  
 solemnly 26:18,  
 85:16.  
 solve 58:4.  
 somebody 95:18.  
 somehow 79:17,  
 84:8.  
 someone 6:12,  
 40:24, 97:24.  
 sometime 6:1,  
 105:18.  
 sometimes 99:17.  
 somewhat 95:17.  
 somewhere 78:17,  
 89:7, 100:18,  
 103:7, 110:23,  
 110:24.  
 son 8:14, 78:15.  
 Sorry 29:24,  
 46:19, 53:2,  
 54:17, 55:18,  
 83:14.  
 sort 4:7, 76:4.  
 sound 13:8.  
 Sounds 40:16,  
 78:13, 104:22.  
 South 78:6.  
 specialist 68:1.  
 specific 99:21,  
 105:9, 113:22.  
 specifically  
 112:17.  
 specifics 61:24.  
 Speculation 75:1,  
 97:6.  
 spell 26:23,  
 67:18, 67:19,  
 85:21.  
 spend 100:13.  
 spoke 46:2, 46:3,  
 48:9, 66:5,  
 88:11.  
 sport 42:4.  
 STACEY 2:2.  
 staff 56:15,  
 67:24, 68:2,  
 81:8.  
 stand 4:9, 11:1,  
 15:24, 17:5,

23:11, 25:20,  
 39:10.  
 standard 46:10.  
 standards 37:11.  
 standing 11:25.  
 start 4:5, 4:6,  
 14:16, 54:2,  
 54:14, 55:3,  
 55:7, 70:1,  
 71:15, 82:1,  
 115:21.  
 started 12:1,  
 21:16, 28:7,  
 32:6, 33:23,  
 54:18, 58:22,  
 67:16, 71:22,  
 80:11, 88:3,  
 99:19, 103:20.  
 starting 21:16.  
 starts 17:6,  
 55:21, 63:10.  
 statements 13:8,  
 66:6.  
 States 22:12.  
 status 79:18.  
 statute 10:1,  
 11:7, 15:10,  
 17:12, 25:3.  
 statutory 4:25,  
 6:9, 15:10.  
 stay 44:4.  
 stenographically  
 117:14.  
 stick 56:3.  
 stocking 36:12.  
 stood 20:17.  
 story 64:2.  
 streamers 114:1.  
 strong 25:18.  
 struggle 82:1.  
 stuck 81:13.  
 stuff 7:18, 8:19,  
 29:1.  
 sub 15:20.  
 subject 6:18,  
 37:4, 75:15,  
 75:22, 77:11,  
 116:2, 116:9.  
 subjects 14:4.  
 submit 11:21.

submitted 75:23, 83:16, 116:10.	sustain 52:3, 58:8, 97:11.	term 86:25.
subsequent 77:1.	Sustained 34:25,	terminate 58:13, 70:24.
substance 87:13.	53:5, 55:16,	terminated 42:14, 46:11.
substantial 22:15.	65:2, 72:12,	termination 31:7, 37:18, 42:15, 73:10, 73:25, 81:4.
successfully 80:13.	76:17, 76:20, 76:21, 77:16, 77:17, 79:11.	terms 4:13, 4:20, 9:20, 16:14, 77:21.
sudden 90:4, 90:5.	sustaining 84:15.	testified 15:23, 33:5, 47:14, 50:6, 50:7, 50:22, 50:25, 51:23, 54:2, 57:12, 58:1, 65:23, 71:10, 72:1, 72:15, 72:17, 74:6, 89:6, 102:2.
suggest 76:11.	swear 26:17, 26:18, 85:15, 85:16.	testify 12:24, 13:3, 14:6, 15:6, 15:25, 19:3, 19:11, 23:1, 24:25, 33:7, 33:12, 33:13, 78:24, 78:25, 79:5, 89:3.
suit 91:1.	sworn 7:5.	testifying 17:11, 19:8, 77:22.
summary 58:7.	system 69:16.	testimonial 17:14.
summed 79:21.	.	Thanks 23:25.
summer 91:22, 92:10, 100:4, 101:1, 102:15, 102:19.	< T >.	themselves 83:22.
summers 100:13.	taken. 19:25, 25:14, 26:5, 85:1.	theory 6:8, 6:17, 14:8, 22:6.
Suncoast 107:21.	talked 35:23, 64:9, 65:25, 105:4, 112:22.	thereafter 4:23, 94:5, 117:14.
Sunset 39:2.	talks 22:13.	therein 20:15, 117:12.
supervisor 28:6, 31:25, 42:2, 42:7, 42:9, 42:25, 47:14, 56:18.	taped 39:6.	thereof 22:4.
supervisors 29:4, 45:1.	tasked 41:1.	thereto 76:19.
supplement 23:23.	Taylor 101:16, 101:25, 102:14, 102:18.	they'll 16:24, 19:10.
support 5:9, 42:5, 46:4, 68:2, 74:11, 81:8.	team 7:1, 27:19, 81:9.	they've 10:7.
supported 36:9.	tech 74:11.	Thinking 58:19,
suppose 78:7.	Technically 71:13.	
supposed 43:11.	technician 42:4, 42:5.	
supposedly 14:7.	technicians 68:3.	
Supreme 22:12.	telephone 61:14.	
surprise 57:12, 57:14, 57:17, 71:25, 72:2, 114:1.	television 75:20, 98:13, 98:21, 116:7.	
surprised 50:24, 51:3.	tells 94:19.	
surveillance 78:11.	temporary 70:25.	
survive 82:16.	tender 42:14.	
suspend 32:2, 57:3, 69:19.	tenor 23:2.	
suspended 55:5.	tension 23:8.	
	tenuous 84:5.	
	tenure 81:25.	

70:17, 102:22.  
 thinks 25:4,  
 40:13.  
 third 48:15.  
 though 4:19,  
 82:19, 83:1.  
 threat 31:7,  
 73:10.  
 threatened 8:15.  
 Three 110:14.  
 throughout 76:1,  
 108:1.  
 throwing 18:19.  
 tie 22:5, 91:2.  
 till 84:23.  
 today 5:14, 8:4,  
 8:7, 8:17,  
 15:20, 15:22,  
 17:20, 26:2,  
 26:11, 27:24,  
 48:24, 49:3,  
 50:1, 50:22,  
 53:2, 77:1,  
 85:4, 85:6,  
 86:4, 90:21,  
 90:24, 95:19,  
 99:24.  
 together 8:13,  
 110:12,  
 111:14.  
 tomorrow 78:8,  
 115:12, 115:21,  
 116:11.  
 tonight 116:14.  
 took 11:14, 15:7,  
 39:5, 94:15,  
 96:5, 100:18,  
 105:22,  
 114:23.  
 topic 80:14.  
 totality 23:9,  
 72:6, 78:4.  
 touch 79:16.  
 touched 82:23.  
 toward 27:25.  
 towards 12:20.  
 town 8:13,  
 102:22.  
 traffic 27:9,  
 27:13, 47:20,

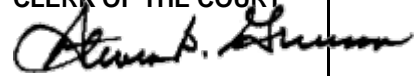
48:4, 48:5.  
 transcribed  
 117:15.  
 TRANSCRIPT 1:12,  
 36:4, 58:11.  
 transferred 47:20,  
 48:4.  
 translate 9:12.  
 TRIAL 1:14, 9:15,  
 13:14, 14:16,  
 14:20, 14:22,  
 15:23, 19:22,  
 20:20, 26:7,  
 75:15, 75:17,  
 75:18, 75:22,  
 80:8, 80:11,  
 88:4, 116:2,  
 116:4, 116:5,  
 116:9.  
 tricky 48:14.  
 trip 100:24,  
 101:17, 101:18,  
 101:21.  
 trips 102:13.  
 trouble 64:23,  
 65:6, 94:11.  
 true 7:7, 12:8,  
 31:3, 61:5,  
 65:12, 66:24,  
 117:16.  
 trust 95:23.  
 truth 24:22,  
 26:19, 26:20,  
 30:7, 58:25,  
 59:15, 59:17,  
 65:11, 85:17,  
 85:18.  
 truthfully 77:8.  
 try 33:20.  
 Trying 8:1, 8:17,  
 14:11, 19:13,  
 22:5, 23:18,  
 70:10, 82:1,  
 83:14, 113:21.  
 turn 28:12, 86:17,  
 101:2.  
 turned 91:22,  
 92:1, 92:20,  
 101:18, 102:16,  
 103:23.

TV 98:4, 98:17,  
 98:22.  
 Twice 60:12.  
 Two 6:20, 28:25,  
 48:10, 49:4,  
 60:7, 67:13,  
 67:23, 70:25,  
 75:4, 77:9,  
 80:16, 103:2,  
 106:17.  
 two-fold 11:15.  
 two. 55:16.  
 type 36:12,  
 62:18.  
 typical 100:4.  
 typically 103:9.  
 .  
 .  
 < U >.  
 ultimate 76:7.  
 Ultimately 14:7,  
 15:4, 18:11,  
 21:25, 30:5,  
 76:17, 77:16,  
 79:10, 80:4,  
 83:6.  
 unavailable 17:2,  
 17:11.  
 unaware 74:2.  
 underage 12:23.  
 undersigned  
 117:8.  
 understand 6:17,  
 11:8, 15:21,  
 18:5, 20:24,  
 22:4, 22:5,  
 33:5, 50:15,  
 52:5, 59:6,  
 65:15, 66:5,  
 83:21, 106:5.  
 understanding 9:4,  
 10:12, 11:16,  
 16:19, 16:21,  
 16:22, 18:11,  
 22:2, 22:9,  
 80:17, 81:4,  
 81:21, 83:19,  
 84:11, 106:7,  
 115:20.  
 understood

82:13.	93:4, 93:13,	98:10, 103:2,
unequivocal	93:20, 93:24,	103:3, 106:17,
36:21.	94:12, 104:11.	106:18, 108:3,
unit 29:16, 41:25,	volunteered	108:5, 110:14,
42:3, 67:4.	107:5.	111:5, 111:9,
United 22:12.	VPSR 41:21, 43:8,	111:10,
unless 82:10.	43:10.	111:17.
Unrelated 56:7,	vs 1:14, 22:11,	weekly 31:25,
56:8.	26:7, 85:9.	110:13.
until 26:4, 41:14,	.	weeks 88:3,
54:3, 57:4,	.	100:16, 103:2.
64:4, 75:22,	< W >.	Wells 39:1.
84:20, 116:9.	wait 24:13.	whatever 15:5,
untoward 79:24.	waiting 12:1,	15:15, 104:12,
unusual 40:18.	99:25, 101:1.	111:3.
using 12:5, 62:1,	walk 90:17.	Whenever 69:13.
62:5, 62:6.	wall 80:10.	whole 16:5, 26:20,
.	Walsh 28:8.	81:18, 85:18,
.	want-- 5:11.	98:6.
< V >.	wanted 4:5, 15:18,	wife 66:24.
vacation 101:5,	21:4, 21:5,	will 4:24, 7:12,
101:8.	22:2, 33:11,	18:11, 19:3,
vacations 100:5.	36:12, 36:14,	20:13, 25:4,
validity 80:1.	57:21, 69:10,	25:20, 26:17,
various 83:17.	79:12, 80:5,	35:1, 58:8,
Vegas 4:1, 27:5,	82:9, 83:6,	70:4, 77:19,
27:7, 56:16,	93:5, 95:1,	85:3, 85:5,
72:20, 80:21,	95:2, 102:11,	85:7, 85:15,
87:4, 89:11,	102:14, 105:4,	91:5, 102:5,
99:9, 110:9.	105:11,	115:17.
version 6:4.	113:25.	winter 96:5,
vice 81:2, 81:24,	wanting 21:10.	96:7.
81:25, 82:21,	wants 19:4, 40:13,	Wirey 43:22,
82:22, 83:18,	40:17, 79:20,	66:20, 67:2.
83:21, 84:18.	111:3, 116:15.	wish 11:21.
victim 8:3,	watch 35:10, 36:3,	Withdraw 52:20.
16:12.	36:4, 41:7,	withdrawn 59:21,
video 13:14, 36:4,	41:9, 75:16,	64:20.
36:5, 36:6.	94:20, 94:21,	Within 6:10, 69:6,
visit 39:16, 42:7,	95:15, 98:3,	69:7, 72:4,
97:22, 97:23,	98:13, 98:17,	80:14.
98:1.	98:21, 98:22,	without 14:4,
visiting 97:20.	110:4, 116:3.	20:8, 35:1,
voice 91:25.	watched 36:5.	75:14, 75:19,
voluntary 9:16,	wearing 90:24,	83:9, 84:15,
13:24, 15:7,	91:1.	116:1, 116:6.
20:14, 21:2,	WEDNESDAY 1:27,	Witnesses 24:8,
24:3, 66:6.	4:1.	24:11, 26:11,
volunteer 29:12,	weed 87:23.	34:19, 35:2,
43:10, 43:17,	week 69:6, 98:8,	40:20, 56:10,

<p>75:15, 80:9, 80:16, 82:4, 116:2. Word 3:17, 78:25, 110:6. wordy 79:22. wore 104:3. work 38:24, 60:18, 67:21, 82:25, 88:12, 88:13, 106:24, 107:1, 115:14. worked 27:21, 28:10, 35:9, 43:11, 67:2, 67:10, 74:7, 104:15, 106:22. Working 28:23, 36:15, 73:8, 74:13. works 16:25, 47:18. worrisome 115:1. wrap 79:16, 84:9. write 100:17, 100:20. writing 80:10, 86:7. wrongdoing 79:9, 81:22. . . &lt; Y &gt;. Yacina 67:17. Ye 63:11. year 4:21, 6:4, 6:20, 10:1, 28:1, 91:24, 96:4, 99:8, 99:14, 105:19, 109:13, 109:18, 111:2, 113:17. years 6:10, 6:21, 11:12, 15:4, 27:11, 27:17, 27:20, 47:11, 59:10, 91:20, 92:20, 104:4.</p>	<p>Yep 110:7. yesterday 5:1, 7:23, 7:25, 8:10, 8:25, 9:6, 15:19, 17:19, 18:9, 50:25, 72:1, 76:21, 79:11, 79:16. Yotoma 67:17, 67:19. you'r3e 63:15. young 25:17, 28:13, 95:9. your-- 27:24. yourself 39:4, 43:14, 53:22, 62:10, 92:14. yourselves 75:13, 115:25. Youth 31:12, 31:19, 31:21, 34:11, 34:13, 36:1, 40:24, 41:2, 44:25, 52:10. . . &lt; Z &gt;. Z-a-c-h-a-r-y 26:25. Zach 26:15. Zachary 26:25. ZACHERY 3:6. Zafiris 43:19, 66:16, 67:1, 74:7, 74:15, 74:25.</p>
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CLERK OF THE COURT



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CASE NO. C-15-309548-1  
DEPT. NO. 25

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JOSHUA HONEA, )  
 )  
Defendant. )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF  
JURY TRIAL

BEFORE THE HONORABLE KATHLEEN DELANEY  
DISTRICT COURT JUDGE

DATED: THURSDAY, DECEMBER 14, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745



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APPEARANCES:

For the State: STACEY KOLLINS, ESQ.  
KRISTINA RHOADES, ESQ.

For the Defendant: MONIQUE MCNEILL, ESQ.  
JONATHAN MACARTHUR, ESQ.

\* \* \* \* \*

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23  
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I N D E X  
O F  
W I T N E S S E S

NAME: PAMELA SAVAGE	PAGE
Direct Examination By Ms. Kollins	47
Cross-Examianation By Ms. McNeill	97
Redirect Examination By Ms. Kollins	110
Recross-Examination By Ms. McNeill	110
NAME: PAULA KRASKY	PAGE
Direct Examination By Ms. McNeill	113
Cross-Examianation By Ms. Kollins	118
NAME: KATERINA BABIN	PAGE
Direct Examination By Ms. McNeill	121
Cross-Examianation By Ms. Kollins	134
Redirect Examination By Ms. McNeill	145
NAME: HUMBERTO ZERATE	PAGE
Direct Examination By Mr. MacArthur	147
Cross-Examianation By Ms. Rhoades	159
Redirect Examination By Mr. MacArthur	165
Recross-Examination By Ms. Rhoades	169
NAME: TOBBI CAPPRON	PAGE
Direct Examination By Mr. MacArthur	170
Cross-Examianation By Ms. Kollins	177
Redirect Examination By Mr. MacArthur	184

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

NAME: DARA COLEMAN PAGE

Direct Examination By Ms. McNeill 185  
Cross-Examianation By Ms. Rhoades 208

Word Index PAGE  
233

\* \* \* \* \*

1 LAS VEGAS, NEVADA; THURSDAY, DECEMBER 14, 2017

2 P R O C E E D I N G S

3 \* \* \* \* \*

4  
5 THE COURT: Just a quick question. I had seen  
6 or my JEA told me that there had been a follow-up request  
7 for a copy of the State's instructions with cites. I  
8 noted that the original version had a few cites in it for  
9 some of the ones that had been included, but I didn't have  
10 that. I hadn't seen where there was another set sent. I  
11 think we can do this no problem, but if there had been I'm  
12 still working off the original set.

13 MS. KOLLINS: We are also working off the  
14 original set. We did see that request, but did not have  
15 time to accommodate it. If there is a specific  
16 instruction that the court wants a citation to --

17 THE COURT: I'm not looking for it. I was more  
18 trying to make sure that there was not a start to this  
19 process that was confusing because there was one set with,  
20 one set without and I have the wrong set. I think we can  
21 do this. I saw what was proposed by the defense.

22 Another -- and this may be where we want to start. I  
23 have a little general thought in advance of getting to  
24 Defendant's proposed, but Ms. McNeill mentioned that there  
25 was the possibility of there being an opposition to one or

1 more of the State's.

2 MR. MACARTHUR: That's correct.

3 THE COURT: Separate and apart from what was in  
4 the Defendant's proposed.

5 MR. MACARTHUR: That's correct.

6 THE COURT: I didn't see where she communicated  
7 what that was.

8 MR. MACARTHUR: She discussed it with me last  
9 night.

10 THE COURT: I would like to start there. It  
11 might only be one or two.

12 MR. MACARTHUR: There's two.

13 THE COURT: Okay. I would prefer to start with  
14 whatever ones of the State's the defense is objecting to  
15 separate and apart from their proposed.

16 MR. MACARTHUR: As they are not numbered, I  
17 don't know which page to direct the court to, but it will  
18 say that the first objection is the lewdness instruction  
19 about halfway through the packet. It's only 3 lines  
20 long.

21 THE COURT: That's something -- for future  
22 reference for the State, it has nothing to do with the  
23 full set with cites and a lot of the ones -- I know we  
24 don't have stock criminal, but that are stock, we don't  
25 need the stock, but the page numbers are so helpful. It's

1 hard to refer to things if we don't have page numbers.  
2 That is for future.

3 MR. MACARTHUR: Just about halfway.

4 The objection here, Judge, is that we recognize  
5 the first half of the instruction as reflective of the NRS  
6 on lewdness. The second sentence -- the objection is  
7 weird -- but does not require physical contact between the  
8 perpetrator and the victim.

9 First, how does one happen without the other, because  
10 the first sentence says an act upon or with the body of a  
11 child under the age over 14. But does not require  
12 physical contact between perpetrator and the victim. That  
13 portion is not in the statute. That's why we asked for a  
14 citation for it to know what the grounds were.

15 It reads weird because I'm not sure how you require  
16 an act upon the body or with the body of a child under 14,  
17 but there is no physical contact. So we challenge it for  
18 lack of cite and not easily understood.

19 MS. KOLLINS: Well, I can comment. A lewd act  
20 upon the body of a child without touching them. You can  
21 be directly the child to do something. That can be  
22 lewdness with a minor.

23 THE COURT: I've got my law clerk in there  
24 standing by, give me the citation for the cases you  
25 have.

1 MS. KOLLINS: I'm working on it.

2 THE COURT: I had not seen the latter part of  
3 language in the instruction either and figured we would  
4 see where that went.

5 I have -- so you know -- I did not have time last  
6 night to do what I would typically do, which is to go and  
7 kind of create the court's final set from this set, which  
8 when I do that I really kind of go through everything with  
9 a fine tooth comb and do my follow up and compare them to  
10 instructions I've given previously.

11 I didn't have time to do that. I did go through them  
12 all and make a few notations, then I figured on what the  
13 objections were from the defense and my final review was I  
14 would -- I'll have that final effort to completely create  
15 a court set tonight, then get them to you tomorrow so that  
16 at least there's an opportunity to look them over once we  
17 complete maybe have the lunch hour, et cetera.

18 MS. KOLLINS: I'm working on the citation Can  
19 we just go to the next one.

20 THE COURT: I'm ready to text law clerk for a  
21 copy when you have it.

22 MS. KOLLINS: I'm working on it.

23 MR. MACARTHUR: Do you want to text -- I'm  
24 texting Monique.

25 THE COURT: I don't have a cite yet.

1           MR. MACARTHUR: The next one is 2 pages down, it  
2 begins with consent, in fact, of a minor child. Our  
3 objection here is this second paragraph starting on line  
4 5, consent, in fact, of a minor child under 16 years of  
5 age to sexual activity is not a defense to sexual assault  
6 with a minor under 16 years of age. We don't believe this  
7 is a correct statement of the law. The reason being,  
8 first let me say that there is not a cite to look at to  
9 see if, perhaps, we are wrong, but the defense's position  
10 is if consent wasn't a defense, then why is there the  
11 ability to pierce rape shield in order to show possible  
12 consent. We'd refer the court to a case called Getron  
13 (ph) and I was made fun of because Monique let me no you  
14 would be familiar with Getron (ph) and I wouldn't have to  
15 go through a lot of facts.

16           THE COURT: I'm familiar with it. It's right  
17 here.

18           Also I would note though because we have to be  
19 somewhat precise here, this is not a citable decision to  
20 my knowledge.

21           MR. MACARTHUR: 131 Nevada Advanced.

22           THE COURT: I didn't realize -- I'm always very  
23 sensitive to this battle over this ever since the Supreme  
24 Court amended the rule about what can and cannot be cited.  
25 I forgot, even though I did go back over this last night I



1 wasn't looking at the citation, it was actually published  
2 versus the other. Mainly I know it was one of the first  
3 ones that came out of the Court of Appeals and was set  
4 into law on the idea of prior sexual knowledge and those  
5 circumstances. But it does have a lengthy discussion in  
6 there I think relevant to this case for the reason related  
7 to Defendant's proposed instructions, but, otherwise, you  
8 wanted to reference Getron (ph).

9 MR. MACARTHUR: Yes, Judge.

10 That citation now, so the record is clear, is  
11 131 Nevada Advanced Opinion 27. As the court would be  
12 familiar with the defendant asked for a stat sex there but  
13 didn't argue it just, you know, consent. The Nevada  
14 Supreme Court in its decision didn't say --

15 THE COURT: Court of Appeals.

16 MR. MACARTHUR: -- Court of Appeals -- did not  
17 say consent was not a defense when reasoning the jury  
18 instructions.

19 So clearly the defense feels as though consent is a  
20 defense to sexual assault. The question becomes whether  
21 or not the child was capable of manifesting consent  
22 because they're more or less advanced than other people  
23 that age. We don't think this is a correct statement of  
24 the law. There is not a citation for us to compare to.  
25 That's the basis for our objection.

1           THE COURT: Can I ask you, there's also a P3rd  
2 cite to this. It's 350 Pacific 3rd, 93. Do you have a  
3 pinpoint cite in yours or discussion of consent in the  
4 Getron case.

5           MR. MACARTHUR: I'll get that, Judge.

6           MS. KOLLINS: Age of consent is not under 16,  
7 it's under 14.

8           THE COURT: There is a citation for that  
9 proposition.

10          MS. KOLLINS: I don't think you can read that  
11 instruction and the Defendant's proposition together and  
12 have it make sense. The age of consent is 16. That means  
13 up to 15 years and 360 days, the law does not recognize  
14 consent if you are under that age. In this case and in  
15 many case where you have a protracted physical situation,  
16 I mean, the victim has been groomed to have sex with them.  
17 They are in a relationship. So that's exactly -- kids  
18 aren't able to make that decision. That's the why the law  
19 protects them. Age of consent -- I'll read the  
20 unpublished version real quick.

21          I read a November 9th published opinion about sexual  
22 statutory sexual seduction, but I assumed they were going  
23 to propose something in that regard today.

24          THE COURT: What case are you referring to.

25          MS. KOLLINS: I printed it out before I came.

1 Obviously, my secretary did not put it in the stack, but  
2 it's like Alotaibi (ph).

3 THE COURT: Do you know what the age over it  
4 is.

5 MR. MACARTHUR: November 9, 2017.

6 THE COURT: I probably have it in back.

7 Let me ask you this, this is where I always have my  
8 difficulties in wanting to make sure I'm completing my  
9 duties properly to make sure the jurors have something the  
10 least confusing as possible. We have this instruction  
11 we're talking about now and on the very next page is the  
12 instruction I referenced that I said you had a citation to  
13 regarding the age of consent. And the language utilized  
14 there is age of consent to sexual penetration is age 16.  
15 Then we have language in the prior instruction that talks  
16 about consent, in fact, of a minor child under 14 years of  
17 age to sexual activity. Are we creating some unnecessary  
18 confusion between certain activities that are alleged to  
19 assert the sexual assault, then talking penetration. Are  
20 they all penetration. I'm trying to figure out is there  
21 better wording.

22 MS. KOLLINS: The reason we drafted it that way  
23 is because the Manning case says sexual intercourse. So  
24 we drafted it sexual penetration. This has always been  
25 problematic in Nevada. When you read sexual assault and

1       lewdness with a minor in conjunction with statutory sexual  
2       seduction you are drawing the necessary conclusion that 16  
3       is the age of consent. The legislative intent -- we  
4       haven't drafted a statute that says that. Consent is  
5       never consent to lewdness. There can be a defense for  
6       somebody over 16, but we take the position that consent is  
7       not a defense for a minor under 16.

8               THE COURT: But your citation in part would be  
9       the Manning case, because of your citation for that for  
10       what the age of consent is period. Then you have another  
11       case that is unpublished, but it is Supreme Court  
12       subsequent to January 1st, 2016, so citable, as  
13       persuasive, but we don't have that citation yet.

14              MS. KOLLINS: It is published.

15              THE COURT: For this discussion.

16              MS. KOLLINS: The first citation I'm looking for  
17       was the challenge to lewdness. I'm waiting for someone to  
18       send me that.

19              THE COURT: That is the unpublished one.

20              MS. KOLLINS: That's published. The knew  
21       opinion on statutory sexual seduction is here -- Alotaibi  
22       (ph) -- if I'm saying it correctly -- not the new one.

23              THE COURT: Not trying to be unnecessarily  
24       confusing, just trying to make our record. The discussion  
25       we started but didn't finish on the first of the

1 instructions disputed by the defense, which was the  
2 lewdness instruction, you have a published citation to  
3 offer for that. I just heard you reference during the  
4 discussion on the other instruction regarding consent,  
5 that you had an unpublished decision -- maybe I misheard  
6 you. Once you know what those are, let's be clear which  
7 one goes to which.

8 MS. KOLLINS: I guess because we started talking  
9 about everything in a group, I have not read the  
10 unpublished decision you and Mr. MacArthur have.

11 MR. MACARTHUR: Sorry. I should have gotten you  
12 a copy. I had a extra copy. I forgot to give it to them  
13 earlier. I just gave it to them.

14 THE COURT: What.

15 MR. MACARTHUR: Getron.

16 THE COURT: I read it for the proposition of it  
17 being error and quite possibly reversible error in the  
18 context of this case to not consider the Defendant's  
19 Proposed Instructions, which gives inverse or the element  
20 od specific positive verse negative instruction. That's  
21 why I was focusing on Getron. That's why I have it.

22 MR. MACARTHUR: I would refer the court to the  
23 Getron decision as provided to the State just now to pages  
24 11 and 14.

25 THE COURT: I don't have that version. I have

1 the "P" cite.

2 MR. MACARTHUR: Permission to approach.

3 MS. KOLLINS: Getron says, instruction in  
4 evidence in the record to determine that Defendant  
5 knowingly had sex with this kid knew or should have known  
6 she was mentally or physically incapable of giving  
7 consent -- this applies to a kid under 14. The statute is  
8 written the same for a kid under 16. So I don't know why  
9 an analogy to that would not be applicable.

10 THE COURT: In the Getron decision at 350  
11 Pacific 3, 93 -- pinpoint cite being 100 to 101, is where  
12 the defense is pointing to for discussion you are now  
13 responding to.

14 Go ahead, Ms. Kollins. Sorry.

15 MS. KOLLINS: Well, if you can give me -- I  
16 don't have the P 3 version.

17 THE COURT: Want me to tell you the  
18 paragraphs.

19 MS. KOLLINS: Yes, please.

20 MR. MACARTHUR: Top of 11.

21 THE COURT: It discusses sexual assault with a  
22 minor under the age of 14 -- sorry, it's in the section  
23 that had a motion to admit evidence of prior sexual  
24 knowledge.

25 MR. MACARTHUR: While the State is reading would

1 it be helpful if I explain why I thought it was applicable  
2 or is that already clear.

3 MS. KOLLINS: Well, go ahead. I guess my  
4 response this, you know, Mr. MacArthur is correct that  
5 occasionally the rape shield may be pierced to show a  
6 basis of knowledge, but not to show the ability to  
7 consent. That is what it says here.

8 THE COURT: It is in that section.

9 THE COURT: I didn't read it the way defense is  
10 proposing it either. I will do a final review of it for  
11 that purpose.

12 That section where the court set forth what is still  
13 the current law on knowledge -- prior sexual knowledge and  
14 what can be shown there, you know, the court remembers  
15 quite well what it made the ruling that made the sense to  
16 overturn, reversed by the Court of Appeals, what the  
17 circumstance were there. But I think that goes to that  
18 aspect not necessarily to consent. That's why I didn't  
19 read it that way.

20 Go ahead, Ms. Kollins, you finish and I'll come back  
21 to Mr. MacArthur to finalize that thought.

22 MS. KOLLINS: I guess what Mr. MacArthur is  
23 trying to say is that consents is a defense to sexual  
24 assault under the age of 16, because of how he reads the  
25 case because rape shield evidence -- rape shield may be

1 pierced in certain circumstances. I agree rape shield is  
2 pierceable in certain circumstances to show knowledge, but  
3 the reason courts admit that evidence to show knowledge is  
4 the show the child's ability to fabricate certain sexual  
5 conduct they otherwise wouldn't know about unless they've  
6 experienced it. That's why that is pierced. It is never  
7 pierced, just like it says here, to advance a theory of  
8 victims general lack of chastity. That is never an  
9 appropriate purpose.

10 So if you are saying that because it was pierced  
11 here, it was pierced here to show that she had the ability  
12 to give consent, that is not why it's shown.

13 THE COURT: The distinguishable facts, in  
14 addition to that, is the child in question in this case  
15 was 12. It's a non-issue in terms of factually being  
16 similar to the case at hand. But to the extent the court  
17 has given ruminations on anything that might guide us on  
18 this, again, the court will do a final review of it for  
19 the purpose proposed by the defense. At this time the  
20 court's preliminary ruling is that the Getron case would  
21 not stand for the proposition that the second paragraph in  
22 the proposed instruction regarding consent related to a  
23 minor under 14 years of age, consent to a minor child  
24 under 16 years of age. The second portion of which is  
25 objected to by the defense, would be in the correct



1 statement of law. I will give it a finer review.

2 MR. MACARTHUR: I appreciate the court letting  
3 me know where its thinking is without a premature ruling.  
4 I haven't yet explained why we think Getron applies.

5 THE COURT: I thought you just did.

6 MR. MACARTHUR: All I have done is refer to a  
7 section that talked about that. I haven't talked about  
8 it.

9 THE COURT: Let's talk about it. You spent a  
10 bit of time when you referenced Getron saying what was in  
11 here, why you thought it said what it said and going over  
12 it. So I thought that was your argument. I apologize, but  
13 I did honestly think that was your argument. So make your  
14 argument now.

15 I said it was a preliminary ruling. I said I'd look  
16 at it later. Go ahead, if you have more to add to help  
17 the court fashion its subsequent review, but you didn't  
18 just say I'm citing Getron. You talked about Getron a few  
19 moments ago.

20 MR. MACARTHUR: I said two sentences.

21 THE COURT: Go for it. Let's go.

22 MR. MACARTHUR: All right.

23 The court is aware in Getron the defense argued  
24 consent. In the Getron decision the Nevada Supreme Court  
25 deciding that the court should have let in some evidence

1 did not explicitly state that consent was not defense.  
2 The opinion discussed generally how defense could argue  
3 consent using prior knowledge, et cetera. But had consent  
4 not been a defense Nevada Supreme Court would not have  
5 used that reasoning or would have included the State's  
6 conclusion that consent is not a defense.

7 So stepping back a little bit, we understand that  
8 there is a crime of statutory sexual seduction. The  
9 reason why it's different from sexual assault is for two  
10 reasons. There are additional elements in statutory  
11 sexual seduction that are not in sex assault.

12 First, is that it only applies to minors 14 or 15.  
13 The court recognized that 14 and 15 are younger than 16  
14 and it's consensual. If it were not consensual, it would  
15 be sex assault. But the fact that it's consensual and  
16 happened to a 14 or 15 year old, these are additional  
17 elements that make it a lesser related crime as opposed to  
18 a lesser included, is what makes it statutory sexual  
19 seduction.

20 Because the fact there is a possibility of consent,  
21 it changes a crime from sexual assault to statutory sexual  
22 seduction. And is therefore a defense to sex assault.  
23 That is reflected inside of the Getron decision generally,  
24 because if consent with not a defense the Appeals Court  
25 would have said so and they would not have engaged in the

1 analysis that they did. That's the reason why we cited  
2 Getron.

3 THE COURT: Thank you. At this time for this  
4 record based on those two State's proposed objected to by  
5 defense, does the State have any citations it wants to  
6 identify for the court first to the lewdness and then the  
7 sexual assault.

8 MS. KOLLINS: Lewdness, your Honor is State vs.  
9 Catanio, 120 Nevada, 1030, pinpointed 1036. I'm going to  
10 read briefly from it.

11 We further include that the Nevada statutory language  
12 providing that a lewd act be done upon or with a child's  
13 body clearly requires intent by the perpetrator to  
14 encourage or compel a lewd act in order to gratify the  
15 accused sexual desires, but does not require physical  
16 contact between the perpetrator and the victim. Thus, a  
17 perpetrator who threatens, coerces, or otherwise  
18 instigates a lewd act with no physical contact with the  
19 victim may nevertheless satisfy the elements of NRS  
20 201.230.

21 MR. MACARTHUR: Assuming that that is a valid  
22 cite I have no reason to think that's not been -- I would  
23 ask that the instruction itself be amended to make it  
24 clear what the State's talking about, is that a victim can  
25 be directed to touch herself. As it's written now that's

1 confusing because the first sentence says it requires and  
2 act upon or with the body of a child and in the next  
3 sentence it say doesn't require physical contact.

4 Now, I wasn't being obtuse as a lawyer. I read that  
5 and was like how can that happen. The State provided me  
6 an example. I now see how that can happen. But I don't  
7 think that it would be obvious to a jury of an example of  
8 that. I think we can clean that up. The State can still  
9 have its instruction if we changed it to say but does not  
10 require physical contact between the perpetrator, victim,  
11 comma, if the victim were directed by the Defendant to  
12 touch herself.

13 MS. KOLLINS: You know, I appreciate  
14 Mr. MacArthur's attempt to clarify something for them. I  
15 think that's left for argument. The instructions are  
16 legal. They are not factual.

17 THE COURT: I will be mindful of making sure the  
18 court is satisfied two things with this instruction and  
19 with the other instructions in dispute -- frankly, with  
20 all of the instructions when I do the final draft from the  
21 court -- that we do our best to have the language be an  
22 accurate statement of Nevada law, but non-confusing to the  
23 jurors.

24 At this point as I looked at this one I do think it  
25 probably needs some revision. May not be necessarily a

1 for example, which could create confusion in and of itself  
2 which is an example not applicable. I don't want to say  
3 anything is not applicable. A lot of testimony about a  
4 lot of things. There's an example that just an initial  
5 read of it could create confusion.

6 So I will be mindful of that. I will review that  
7 decision and see how to adjust this in a way I believe  
8 meets the concerns of the defense, but also provides for  
9 the proper instruction.

10 Then as to the consent instruction, did you have a  
11 citation you want to put in the record and provide it to  
12 the court.

13 MS. KOLLINS: Your Honor, I do. I haven't  
14 pulled it up in an effort to review the statutory sexual  
15 seduction language. I have not reviewed it in completion  
16 because it's a very new opinion. It is -- let me spell it  
17 Alotaibi vs. State, 2017 Nevada Lexus 110, published,  
18 filed on November 9th.

19 THE COURT: Unfortunately we have West Law so  
20 we're not going to be able to find the cite that way. We  
21 probably, with law clerk, just having the spelling can  
22 come up with something. You said it was November 9th.

23 MS. KOLLINS: Before the court rules on the  
24 consent issue, if I could have a little bit of time to  
25 digest this opinion. I will try to email it to your

1 clerk, if I can.

2 THE COURT: I'm not going to work on these again  
3 tonight in any substantive way until tonight (sic). So  
4 we're settling them now. I'm going to give my preliminary  
5 rulings now. Wee'r going to have our discussion now in  
6 the most detailed. There will be an opportunity to  
7 provide anything further to the court that counsel feels  
8 the court should review before it provides and makes its  
9 final proposed set between now and, I would say, probably  
10 9 o'clock tonight. Then I will obviously, again, provide  
11 the court's draft to the counsel in the morning on Friday.  
12 I appreciate that counsel may not have time review it in  
13 the morning Friday, my hope would be that if things go as  
14 planned and we have a lunch break before we come back to  
15 instruct and close, that counsel will have ample  
16 opportunity to review the court's set and ultimately we  
17 can make a final record on any disputed instructions.

18 I can give you a for instance of what you might see.  
19 I do my best when I do my set to make notes as I go along  
20 on anything I change so I can direct counsel specifically  
21 what to review. But I can give you an example. I don't  
22 have any page numbers, again, but the general instruction  
23 that talks about that they are here to determine whether  
24 the Defendant is guilty -- my language -- or not guilty  
25 from the evidence in the case. You are not called upon to

1 return a verdict of guilty or not guilty as to any other  
2 defendant. That instruction, the way the State proposed  
3 it, I would say the older version of that instruction,  
4 which says you are here to determine the guilt or  
5 innocence of the Defendant. I have change that  
6 instruction and used it for years now, the reference to  
7 guilty or not guilty, staying away from references to  
8 guilt or innocence. Just because of, you know, how we  
9 discussed it in the voir dire and what actually is their  
10 burden to determine and not have it appear there's some  
11 obligation for the defense to prove innocence by using  
12 that language. That's just an example of where I make  
13 adjustments. I don't believe it's a major one. I don't  
14 believe there's one in dispute, but I will call out in my  
15 final set I've made the change. Here's what page it's on.  
16 Here's why kind of thing. That's how I think we would  
17 ultimately get to a final conclusion.

18 So just to sum up again. If either want to send me  
19 something for my consideration before the end of the day,  
20 you have until 9 o'clock tonight to do it. If and when  
21 you get the court set, I will also do my best to build in  
22 some time to have a final discussion on the court's final  
23 set. Whether it's before or after we instruct will depend  
24 on timing, but there will be an opportunity to make a  
25 record once the court as reviewed everything and made its

1 final set. Absent some significant case law that was  
2 overlooked or major clerical error on the court's part,  
3 that would be the final set.

4 Does that make sense. Any questions about that.

5 MS. KOLLINS: No, ma'am. Thank you.

6 THE COURT: Anything from the State or defense  
7 has objection to.

8 MR. MACARTHUR: No, your Honor.

9 Just to be clear, there has not yet been a final  
10 ruling on consent of a minor not being a defense.

11 THE COURT: I'll say it again this way. I don't  
12 want there to be any confusion, whatsoever. Until I sit  
13 down tonight after this discussion after review of any  
14 additional information sent to me by the parties, if  
15 anything, after the review of the case I have pulled  
16 together for final review and the court drafts its -- the  
17 court will sit down and draft its final proposed set, that  
18 is when the court will make the final decision. I'm not  
19 making any final decision today. I've giving you  
20 preliminary rulings on what I believe to be the likely  
21 outcome and those preliminary rulings, after I give the  
22 preliminary rules to my JEA, you'll have an idea where we  
23 are going with it.

24 To do so and wrap up the discussion on the defense  
25 objection to the State's proposed, as to the instruction



1 on lewdness with a child under the age of 14, I believe  
2 that it is a correct statement of law, albeit confusing  
3 potentially. The court will endeavor to read the State's  
4 citation for the proposed instruction and find a way to  
5 finalize it in a way that eliminates the confusion there  
6 so that it is, again, a correct statement of the law, with  
7 as minimal potential for confusion to the jurors as  
8 possible.

9 As to the consent instruction, the court will review  
10 the Alotaibi vs. State decision. The court obviously will  
11 review the Getron decision for that discussion, and in  
12 light of the argument made by the defense, and make a  
13 final determination on what that instruction should be.  
14 It's the court's preliminary ruling that the instruction  
15 is a correct statement of the law as the court understands  
16 it to be, but the court still has to review the items  
17 provided here today in discussion.

18 I'm going to ask my law clerk at this time, I have  
19 two case citations that I would like to make 3 copies of,  
20 please, so that the court can have one and make a copy for  
21 each counsel table. One I have a Nevada citation for you.  
22 It's State vs. Catanio, 120 Nevada 1030. I don't remember  
23 what year that decision was, if you don't have it hand.

24 MS. KOLLINS: 2004.

25 THE COURT: The other citation, I only have the

1 Lexus cite, so I won't give you that. I have one for West  
2 law. The spelling is unique enough. It is a very recent  
3 decision from the Supreme Court so it should be able to be  
4 located through West Law based on the date it was  
5 published. The name is Alotaibi vs. State, published  
6 November 9, 2017.

7 MS. RHOADES: I have it from the statute, your  
8 Honor. I just wrote it after. It is NRS 201.560.

9 THE COURT: Subsection 3.

10 MS. RHOADES: Not a subsection 3. It's another  
11 element per the statute. It's goes the 1 and 2. Also we  
12 have to show the intent to solicit and persuade. I think  
13 1 and 2 goes for purpose for which the child is being  
14 taken. I don't know if it's a 3. It's kind of a  
15 confusing statute.

16 THE COURT: Give us the statute.

17 MS. RHOADES: 201.560.

18 MR. MACARTHUR: NRS 201.560.

19 MS. RHOADES: We need a continuation of that  
20 first paragraph.

21 MS. KOLLINS: Just in my review of this, I don't  
22 know how to say it -- Alotaibi opinion -- the distinction  
23 made between statutory sexual seduction and sexual assault  
24 is that age is not an element of sexual assault, but just  
25 fixes the penalty. That's what the Supreme Court

1 concludes in that opinion. The consent issue is out of it  
2 that is an age required. It's the element --

3 MR. MACARTHUR: May I respond.

4 THE COURT: If you have to respond, sure.

5 MR. MACARTHUR: It's absolutely an element by  
6 statute, because if the person were not 14 or 15, then you  
7 would have a different crime. I don't have to list out  
8 all the various crimes it could be, but the additional  
9 element which is what makes it a lesser related crime if  
10 the person is 14 or 15 and contact was consensual that's  
11 what makes it statutory sexual seduction. If it's not  
12 consensual, it's a sex assault. If the person is younger  
13 than 14 or 15, I presume that is also a sexual assault.

14 So speaking generally any factor or piece of evidence  
15 that prevents the State from being able to gain a  
16 conviction is a defense, so if this was a robbery with use  
17 of a deadly weapon and we show that there is no deadly  
18 weapon, it just becomes a robbery. Or we show that the  
19 taking happened, not related to the force used, then you  
20 can have a battery, you can have a larceny, but you  
21 wouldn't have a robbery. Therefore, it is a defense.

22 I hope we are not getting far afield. I'm not  
23 arguing a lesser included. I'm literally saying that it's  
24 clearly an element in this set of circumstances, because  
25 we know that in at least a portion of the State's theory

1 of prosecution that Morgan was 14 or 15 years of age. If  
2 she was having consensual sexual contact with Josh,  
3 assuming the jury could think that, then that would become  
4 a statutory sexual seduction, which is a defense to sex  
5 assault.

6 MS. KOLLINS: Well, first of all, I'm reading  
7 from the opinion. So the opinion states sex is not a  
8 lesser included, nor is it a lesser related of sexual  
9 assault on a minor.

10 Statutory sexual seduction is Defendant driven. I'm  
11 reading from the opinion and it says, as we explained  
12 above, the age of the victim is not an element required  
13 for the conviction of the greater offence of sexual  
14 assault. So the Supreme Court, in this opinion, has  
15 determined that the age is not an element of that offence  
16 and that it only goes to affix the penalty. So we can all  
17 read and digest it later.

18 THE COURT: That is what we'll do. This is one  
19 discussion. It's the primary discussion for the settling  
20 of instructions. I want to complete it here shortly.

21 There is still time between now and 9 o'clock tonight  
22 for the parties to send me whatever they want to send me  
23 as far as case law, discussion of case law, for my final  
24 consideration for when I sit down and get back tonight to  
25 make the final draft by the court to review. So there's

1 ample opportunity to add commentary on a case that they  
2 think need to provide to the court to do so. I'll give my  
3 e-mail address to ensure that court receives it, because I  
4 don't get my JEA or law clerk emails to mine.

5 Any other corrections from the State on its proposed  
6 version.

7 MS. RHOADES: No, your Honor.

8 THE COURT: I sometimes reorder the instructions  
9 so that the general instructions are after the primary,  
10 specific instructions. The way the State has proposed  
11 them now, with one exception, is fine. It has the bulk of  
12 the general up front, then the crime specific, then the  
13 deliberation type, shall we say.

14 MS. KOLLINS: State has no problem with that as  
15 long as the jurors are given individual copies of the  
16 instructions because there are so many counts.

17 THE COURT: The jurors always get copies of  
18 instructions. I don't provide them to them when I'm  
19 reading the instructions, but they have the individual  
20 copy sets when they go in to deliberate.

21 MS. KOLLINS: They don't have them during your  
22 reading to follow along.

23 THE COURT: I find it distracting for them and  
24 for me as they're flipping through the pages and going  
25 back and forth.

1 I mentioned earlier that I had reviewed the Getron  
2 decision because there is some significant discussion in  
3 Getron decision about what is identified as the inverse  
4 elements instructions. If you are looking at the Pacific  
5 3rd, pinpoint cite, that discussion begins on page 102 and  
6 carries through to page 103. In that discussion there is  
7 quite a bit of dialogue about the argument being whether  
8 the court erred in rejecting proposed inverse element  
9 instructions. Cites to Crawford utilized by the defense  
10 Also cites to Carter.

11 And Carter being Crawford taken together, it's the  
12 court's general approach to these proposals by defense  
13 that it would be error not to give it. As long as the  
14 proposed inverse or negatively phrased element instruction  
15 is not misleading or confusing on the issues. That it is  
16 in fact a correct statement of the law.

17 So that's the framework with which I approach the  
18 Defendant's proposed, that is how I would like to settle  
19 defense proposed. I would open the discussion this way,  
20 let me let me law clerk give you your copies.

21 MR. MACARTHUR: Yes.

22 MS. KOLLINS: Thank you.

23 MR. MACARTHUR: When the court is ready  
24 corrections on packet.

25 THE COURT: All right.

1 MR. MACARTHUR: I would direct the court to  
2 pages 5 and 6, same instruction with and without cites.

3 THE COURT: Yes.

4 MR. MACARTHUR: There would need to be 4  
5 corrections made on each page. At line 14, we would  
6 eliminate at the end of the sentence, did not have, and  
7 replace it with had.

8 If the State fails to prove beyond a reasonable doubt  
9 the defendant did not have, should read that the Defendant  
10 had. That's line 14.

11 THE COURT: Okay.

12 MR. MACARTHUR: Same correction made at 19 and  
13 21. On 19 we would eliminate did not, and replace it with  
14 had the. On line 20, intend to read intent. Change D to  
15 T.

16 THE COURT: Okay.

17 MR. MACARTHUR: Last correction on this page  
18 would be line 21, at the end of the sentence. That the  
19 Defendant did not have, did not have should be eliminated,  
20 replaced with had.

21 As 5 and 6 mirror each other, the same corrections  
22 made to 6 that we just made to 5.

23 THE COURT: Any other corrections.

24 MR. MACARTHUR: Not that I'm aware of.

25 THE COURT: Back to -- with the overarching

1 understanding of how the court viewed the Defendant's, I  
2 want to open the door to the State and whether the State  
3 is prepared to address it this way now or whether that is  
4 something you want to provide to the court later today.  
5 I'll leave that up to you, but my question to the State  
6 then is with the understanding that the court believes it  
7 to be error not to give these instructions when requested,  
8 as long as they are a correct statement of law and not  
9 misleading or confusing to the jury, does the State have  
10 objection specifically to any of these proposed inverse  
11 instructions.

12 MS. KOLLINS: Several.

13 THE COURT: Okay.

14 MS. KOLLINS: I'm just going to go through them  
15 in order.

16 Page 2 of the Defendant's Proposed Instructions, this  
17 is an inverse instruction. It directs them to find facts  
18 Directs them to what constitutes inconsistent statements.  
19 What constitutes conduct that reflects on their inability,  
20 those are not inverse. I don't believe those are a  
21 correct statement of law. Any of those factors that have  
22 been woven into the stock credibility instructions. So I  
23 object to that one in its entirety.

24 THE COURT: We have a credibility or  
25 believability instruction that is -- not that there is a



1 criminal stock that is a standard by which I think the  
2 court can give that instruction. This is the proposed.  
3 There is not a cite for this. I have seen this version be  
4 proposed before. I have not had occasion to give this  
5 version before. I want to hear from Mr. MacArthur, if he  
6 wants to make any record, for why this instruction would  
7 be appropriate.

8 MR. MACARTHUR: Thank you, Judge.

9 THE COURT: There are components, by the way, of  
10 your proposed that would be the common version.

11 MR. MACARTHUR: Thank you. And the court did  
12 recognize that there is no such thing as a criminal stock.  
13 We are not bounds to instructions we're commonly  
14 accustomed to seeing. This is adapted from federal jury  
15 instructions and will be a clear statement of law.

16 THE COURT: All right.

17 MR. MACARTHUR: We don't mind providing a set.

18 MS. KOLLINS: Along that same vain, why don't we  
19 go to back to similar, in my view. Here is my issue with  
20 that, your Honor. A defendant is entitled to jury  
21 instructions on the elements of the offenses. He is not  
22 entitled to jury instructions regarding the status of a  
23 witness.

24 There is no constitutional violation. There's no due  
25 process violation to not give those. I read a couple of

1 Ninth Circuit cases on what the're entitled to in  
2 instructions. They are entitled to instructions on the  
3 law that reflect element of offenses. I take that from  
4 Hayes vs. Woodford, 301 F3rd, 1054, 1060, Ninth Circuit  
5 case 2002. I couldn't find any Nevada on point. I don't  
6 know how that is helpful to the jury. I don't know how  
7 that helps them in reaching a conclusion or assists them  
8 in deliberations. I object to that in it's entirety.

9 THE COURT: I got the federal 3rd cite, but not  
10 the case name.

11 MS. KOLLINS: Hayes vs. Woodford.

12 THE COURT: Did you want to speak.

13 MR. MACARTHUR: Ms. McNeill might do a better  
14 job. This is something she added after our conversation.  
15 I can wing it.

16 THE COURT: We can fold it in later.

17 The remainder, I believe, are the -- where we  
18 have a cite, Crawford, with and without. Those being  
19 proposed inference as to the elements. Do you have any  
20 commentary on those.

21 MS. KOLLINS: I guess, here is where I struggle  
22 and maybe I need to sit down and read Getron and sit down  
23 and read Frasier vs. State, 385 P3rd, 32, Nevada 2016,  
24 where it was found not to be erroneous when this court  
25 didn't give converse instructions. So I need to juxtapose

1 those opinions in my head. I understand what Getron says,  
2 but I also see what Frasier says. It was not erroneous  
3 for us to refuse duplicitice instructions. I need to  
4 juxtapose those in my head. I wasn't aware that when I  
5 walked in today to object to converse, I wasn't relying on  
6 that one. Maybe that's my fault for not looking at  
7 that.

8 THE COURT: It's not that at all. It's one of  
9 those things we all go look at things that might inform  
10 us. I'm aware of this case. There are other cases that  
11 speak to what you just said, Ms. Kollins, Frasier being  
12 one of them that talks about if there are instructions  
13 that cover these subjects it is not error not to give  
14 duplicitous instructions.

15 I didn't view any of these as falling into that  
16 category, because these all appear to be -- perhaps it was  
17 the way they were offered -- appear to be simply the  
18 negative element instruction or converse element  
19 instruction. I think Getron proffered and Carter taken  
20 together stand for the proposition that those instructions  
21 should be given if requested. And it would be error not  
22 to do so, as long as they are not unnecessarily confusing,  
23 duplicitous or any kind of misstatement of law.

24 So that is how I approached it today. I appreciate  
25 the State wouldn't have known the court was approaching it

1 that way. I have no problem if you want to take time to  
2 take a look at the cases and give a final thought on  
3 that.

4 MS. KOLLINS: I guess understanding the  
5 framework within which the court is viewing the inverse  
6 instructions that doesn't mean they will be given to the  
7 exclusion of those proposed by the State.

8 MR. MACARTHUR: In addition we keep yours and  
9 add ours.

10 THE COURT: The way they were proposed appear to  
11 be -- one thing I didn't do is a line by line comparison  
12 on how the State proposed the instruction on the elements.  
13 And then to see if the defense proposed included there  
14 converse matched up in terms of the element part. But to  
15 the extent that the State has those elements it would be  
16 basically the State's instructions with the Defense  
17 proposed inference instruction together.

18 MS. MCNEILL: I just took theirs. Usually  
19 they -- when I do them when I have inverse instructions a  
20 lot of times the judges like to put it on and the State.  
21 Sometimes it can get clunky if it's not mirrored. I typed  
22 up what they'd given me and put mine under it.

23 THE COURT: I approached dealing with the  
24 defense proposed from the standpoint of there being  
25 decisions, recent ones, inclusive of Getron that talks

1 about it being error not to if the defense requests give  
2 these types of inverse element instructions, as long as  
3 they are not misstatements of law, confusing to the  
4 jurors, or to some degree based on other case law like  
5 Fraiser so they're overly duplicative.

6 I indicated as a general assessment of defense  
7 proposed they were not those things. They were  
8 appropriate to give, subject to a final review, if they  
9 are -- as long as they don't, again, misstate the law,  
10 confusing, or duplicitous. I appreciate the State is  
11 going to weigh in on its opinion on things and give us  
12 information on that. I'm not prepared to do that this  
13 morning.

14 MS. KOLLINS: Now that Ms. McNeill is here  
15 Mr. MacArthur said instruction on page 15, factual  
16 instruction, Ms. McNeill would be able to respond to the  
17 State's objections to that. I note she just got her purse  
18 down.

19 My position is that your client is entitled to jury  
20 instructions on elements. That is his right based on what  
21 he is charged with. He's not entitled to give factual  
22 recitation to the jury about things that are readily  
23 observable. I don't think he's entitled to an instruction  
24 about your client's custody status. You are not to glean  
25 anything from the fact that Mr. Honea is out of custody

1 and the victim is in custody. I don't think that any of  
2 that is appropriate for a jury instruction. I think it  
3 highlights it. I didn't say that when Mr. MacArthur was  
4 here. I think it's not lost on anyone she's in custody on  
5 this case. I'll submit it and disagree with that.

6 THE COURT: All right.

7 Ms. McNeill, Mr. MacArthur indicated this was  
8 your proposal and wanted to see if you had something you  
9 want to add. What you don't know is the court is going do  
10 a final settling later tonight, with the opportunity for  
11 both parties to provide additional cases and commentary  
12 before 9 o'clock for the court to consider when it's doing  
13 its final version. And of course the opportunity for the  
14 parties to comment on the court's version at some point  
15 tomorrow around the lunch hour. That's where we are at.

16 MS. MCNEILL: He just punted that to me. Makes  
17 sense.

18 Your Honor, I got this from instructions that  
19 are published and offered in these cases. What I pattern  
20 after is in cases where the State has someone testifying  
21 pursuant to agreement to testify, they offer an  
22 instruction that says something along the lines, you heard  
23 testimony from ex-person, in relation to their agreement  
24 to testify. There is argument about whether or not they  
25 get to say part of that agreement includes they will agree

1 to testify truthfully. There is case law when the State  
2 gets to put that in and when they don't.

3 This is very similar to those instructions that the  
4 State asked for in cases where basically snitches come in  
5 and testify pursuant to agreement to testify. I don't  
6 think it -- I mean, I think that it implies something, but  
7 it's just a factual statement. There's no implication in  
8 there other than these are just bare facts. That's what I  
9 patterned it after. I can probably find a case that talks  
10 about those instructions that the State gets in those  
11 cases, if I need to.

12 THE COURT: I may have one. I can think of one  
13 case where that occurred. I don't recall that instruction  
14 being included in that case, but I will look at it. I'll  
15 do that.

16 MS. MCNEILL: That is one of our witnesses.

17 THE COURT: I will do that.

18 MS. MCNEILL: So I would submit on that. You  
19 know, it is what it is.

20 THE COURT: Anything to add.

21 MS. KOLLINS: Well, additionally, you know, the  
22 invocation if there is certain instructions out there  
23 about agreements to testify I'm certain that those are out  
24 there. But those have nothing to do with invocation. If  
25 we are going to draft something like that I'd ask that we

1 draft it together. If you are going to instruct on this  
2 issue that she was given -- you can tell them she was  
3 given immunity from prosecution. I don't know that you  
4 necessarily need all of that language. I don't think they  
5 should be instructed on things that are readily factual,  
6 observable. We couldn't have her invoke in here in front  
7 of a jury.

8 MS. MCNEILL: Well, we did play the tape where  
9 she invoked.

10 MS. KOLLINS: That was necessary because of the  
11 responses we were getting to questions. That wasn't  
12 something we did lightly.

13 THE COURT: All right. I will make a final  
14 review. My preliminary ruling indicated with  
15 Mr. MacArthur is we started the discussion this morning  
16 with your cites to oppositions to theirs. I gave my  
17 preliminary ruling on those. The court will review before  
18 I give my final set.

19 My preliminary ruling would be that this instruction  
20 would not be given, but I want to take a step back and  
21 take time to see -- now that I understand better the  
22 genesis of it -- to the extent it would be something I'd  
23 give, I'd lean more to what the State just indicated as a  
24 potential alternative proposal.

25 MS. KOLLINS: The invocation of her rights



1 against self-incrimination, I'd put in that language. So  
2 when we're drafting something there is immunity, that  
3 whole issue. I realize what was in the tape. I don't see  
4 the need for it to be highlighted. Putting every piece of  
5 testimony in an instruction, just because it's beneficial  
6 to one over the other.

7 MS. MCNEILL: I'm not sure what the objection is  
8 to her invoking. Her invoking caused them to give  
9 immunity. You can't talk about when a criminal defendant  
10 invokes because you don't want any inference that, look,  
11 an innocent person would talk to police. There's case law  
12 that exists that talks about the defendant invoking. But  
13 she's not a defendant. She invokes. That's what led to  
14 immunity. I don't know what the objection is to that  
15 portion of it.

16 THE COURT: So I'll make a final review of  
17 that.

18 MS. KOLLINS: As to everything in the converse,  
19 I will look at that, look at the language and read Frasier  
20 and read Getron. The only other one that I at least want  
21 to bring to the court's attention right now is the  
22 subjective state of mere servitude in the Randolph case.  
23 Randolph makes a discussion about how the Supreme Court  
24 reviews reasonable doubt. Randolph makes it clear  
25 statutory definition, statutory definition, do not modify,

1 add to it, quantify it. Randolph is clear on that point.

2 So I agree that there is a quote in there that talks  
3 about subjective servitude, but no where in that decision  
4 does it say that that is an appropriate part of the  
5 analysis to impart upon a jury. So that is my objection  
6 to that one.

7 THE COURT: All right. Anything else we need to  
8 address.

9 MS. MCNEILL: Just so I know. The consent one I  
10 know the State provided this case. Are you reserving  
11 ruling on that.

12 THE COURT: My preliminary ruling was I thought  
13 it was the correct statement of the law. Although I  
14 wanted to make a final review of what had been offered by  
15 the defense as far as the discussion with Getron, which I  
16 had not identified as being supportive of the decision to  
17 say that consent is a defense. One of the arguments made  
18 by the State was that that discussion in Getron that  
19 ultimately that discussion period goes to the issue of  
20 knowledge of the alleged victim and their understanding of  
21 sex for purposes of whether they might fabricate, but not  
22 necessarily to a consent issue. The court indicated it  
23 would review for that purpose, but the preliminary ruling  
24 was it was a correct statement of law.

25 MS. MCNEILL: It stand for the proposition --

1 because I have read the case. I don't see anywhere where  
2 it says -- if consent wasn't a defense, why would we be  
3 allowed to bring in evidence of consent. It doesn't just  
4 go to --

5 THE COURT: It went to the discussion --  
6 Mr. MacArthur can fill you in, that way you can decide if  
7 you want to supplement. That latter discussion in that  
8 case went to the discussion and was read directly from the  
9 decision that age -- talking about age now -- and being  
10 statutory seduction is not a lesser included under  
11 circumstances of that. Mr. MacArthur's argument was if  
12 statutory seduction is a lesser included, then that's  
13 sexual assault, et cetera. So we had that discussion. I  
14 think he can fill you in on that. You can read it. I  
15 don't think Ms. Kollins is offering it as a absolutely  
16 definitively determined issue. It was more take a look at  
17 how the court discussed statutory sexual seduction not as  
18 a lesser included and appears to make it clear that way  
19 the elements are that consent would not be a defense.  
20 We'll have that discussion.

21 MS. MCNEILL: Not a defense to sex, but I don't  
22 see where it's not a defense to sex assault.

23 THE COURT: That is where the age discussion  
24 came.

25 MS. MCNEILL: That is what I'm looking for.

1 Consent cite that says that that's a correct statement of  
2 law.

3 MS. KOLLINS: I don't know which instruction --

4 THE COURT: Consent.

5 MS. KOLLINS: One case talks about 16 being the  
6 age of consent in Nevada. The implication is 16 should  
7 not be a defense. There's new case that came out that  
8 just kind of goes through a broad discussion of statutory  
9 sexual seduction, sexual assault. I pulled it in order to  
10 all read it and decide how we thought the instruction  
11 should be handled. So I never said that to Mr.  
12 MacArthur.

13 MS. MCNEILL: I get that your asking for one.  
14 I'm asking where do you get that from.

15 MS. KOLLINS: I cited one that says 16 is the age  
16 of consent. It's Manning vs. State.

17 16 is the age of consent. Consent is a defense to  
18 sexual assault. That's the position we are taking. We're  
19 not done with that portion of instructions yet.

20 THE COURT: Ms. McNeill, talk to Mr. MacArthur.  
21 Mr. MacArthur will give you low down on everything. We  
22 talked about I gave the parties until 9 o'clock tonight to  
23 supplement what they want to supplement. I would like to  
24 take a restroom break and get the witness done this  
25 morning.

1 MS. RHOADES: While you're looking through those  
2 tonight I want to note that physical force inverse one  
3 they proposed, I don't believe that second paragraph is a  
4 correct statement of the law.

5 THE COURT: Can you gibe me a page number.

6 MS. RHOADES: 7.

7 THE COURT: Each proposed given with or without  
8 a cite -- this 7 and 8 instructions. What they are  
9 proposing inverse is not a correct statement of the law.

10 MS. RHOADES: That's correct.

11 THE COURT: I don't want to assume that's the  
12 only one the State will have.

13 MS. RHOADES: I was just looking at that now.

14 THE COURT: Okay.

15 (Brief recess taken.)

16 THE COURT: Resuming in State of Nevada vs.  
17 Joshua Honea. Counsel for the State, counsel Mr. Honea  
18 and Mr. Honea. Our jurors are present.

19 We have the witness. We are resuming questioning  
20 with Ms. Savage from yesterday.

21 Can I ask you to please to acknowledge, for the  
22 record, you understand you are still under oath.

23 THE WITNESS: Yes.

24 THE COURT: When you are ready.

25 MS. KOLLINS: Thank you, your Honor.

## CONTINUED DIRECT EXAMINATION

1  
2 BY MS. KOLLINS:

3 Q. How are you, Ms. Savage.

4 A. Doing good. Thank you.

5 Q. If there's anything I ask you that you need  
6 clarification on, need a break, let me know?

7 A. Thank you.

8 Q. Yesterday part of thing we talked about was  
9 Morgan's 13 birthday.

10 When Joshua decorated Morgan's room, was that a  
11 plan that came up with you and her step dad or did he do  
12 that on his own or something different?

13 A. There is no step dad.

14 Q. Is that a plan he made with you to decorate  
15 her room together?

16 A. I didn't help him. He asked if he could  
17 decorate it.

18 Q. When we left we were talking about 2012. Do  
19 you recall Morgan taking any trips with Joshua?

20 A. Yes.

21 Q. What do you remember?

22 A. I remember Josh coming on a family trip. I  
23 had family from out of town. We went to Laughlin.

24 Q. Who went to Laughlin?

25 A. Myself, Morgan, Joshua, my sister, my niece

1 and nephew, and great nephew.

2 Q. All those people take one car or more than one  
3 car?

4 A. More than one car.

5 Q. Did you stay in Laughlin?

6 A. Yes.

7 Q. How many hotel rooms?

8 A. There were -- Josh had his own. My sister and  
9 I and Morgan shared a room.

10 Q. So under no circumstance, I assume, was Morgan  
11 supposed to be sharing a room with Joshua?

12 A. No.

13 Q. Do you recall when that trip was, that trip to  
14 Laughlin?

15 A. Yes, it was early 2012.

16 Q. And how is it that Josh came to be involve in  
17 that trip?

18 A. Because he asked to come. And my car wouldn't  
19 hold my visiting family, Morgan, and myself.

20 Q. Now, the summer when Morgan turns 13, is  
21 there -- in 2012 -- is there another trip somewhere you  
22 recall?

23 A. I do remember a day trip to Disneyland.

24 Q. You believed that was the summer of 2012,  
25 after Morgan turned 13?

1           A.       Correct.

2           Q.       Tell me how you become knowledgeable about  
3 that trip?

4           A.       Both Josh and Morgan approached me. It was to  
5 be a turn around day trip, to just go to Disneyland, to  
6 celebrate her birthday.

7           Q.       Okay. And was anybody else suppose to go with  
8 them?

9           A.       Not that I'm aware.

10          Q.       What -- would you have given permission before  
11 the trip for them to stay over night?

12          A.       No.

13          Q.       Was it your -- so you said your understanding  
14 was it was a day trip. Did that mean drive from Las Vegas  
15 to Disneyland and come home the same day?

16          A.       Yes.

17          Q.       Did that happen?

18          A.       No.

19          Q.       Tell me what happened?

20          A.       I received a phone call that afternoon that  
21 Josh became ill on a ride, and that they contacted Joshes'  
22 mother and she didn't want him to drive back because he  
23 was feeling ill so they got a hotel room.

24          Q.       Okay. Did you ever see pictures from that  
25 trip?



1 A. No.

2 Q. Did you ever see Morgan's photo album?

3 A. No.

4 MS. KOLLINS: May I approach the witness, your  
5 Honor.

6 THE COURT: You may.

7 BY MS. KOLLINS:

8 Q. Showing you State's admitted 25. Do you  
9 recognize -- first of all, the individuals in the  
10 photograph?

11 A. That is Josh and Morgan.

12 Q. Is that a photograph you've ever seen  
13 before?

14 A. No.

15 Q. So, when it became known to you that Josh was  
16 ill and they had to stay overnight, what was your reaction  
17 to that?

18 A. I wasn't happy. I asked her if he was safe.

19 Q. How did she respond to me?

20 A. She told me she was fine. Not for me to  
21 worry.

22 Q. Did she return home the next day?

23 A. Yes.

24 Q. Now, this trip to Disneyland, did you write a  
25 note for Josh Honea to take Morgan to Disneyland?

1           A.       No, I do not recall a note.

2           Q.       Now, you said it was after her birthday in  
3       2012 Morgan annotated that as December 2012. Do you have  
4       any reason to believe it might have been a different time  
5       of year or do you know? I know it is been while ago.

6           A.       It has been awhile ago. I do remember it  
7       occur in 2012. So December, that's what she noted.

8           Q.       But you have never seen that photo album?

9           A.       No.

10          Q.       Now, that same year when Morgan turned 13, if  
11       you recall, is there any request for birth control?

12          A.       Yes.

13          Q.       Tell me about the circumstances about the  
14       birth control?

15          A.       Morgan was telling me that she was having an  
16       extreme menstrual cycles. I understand because there is a  
17       family history of that. So I made an appoint for her to  
18       go to an OBGYN. It checked out and she got a  
19       prescription.

20          Q.       Fall of 2013 -- or 2012?

21          A.       Correct.

22          Q.       Did you take her to the OBGYN to get her  
23       pills?

24          A.       Yes.

25          Q.       Prior to that had you considered putting her

1 on birth control before?

2 A. No.

3 Q. Now, at this time what is the interaction  
4 between Josh and Morgan?

5 A. They had regular contact, frequent contact,  
6 like daily. There were phone calls. There were  
7 arguments. I don't know what the arguments were about.

8 Q. Now, so Morgan just turned 13. That is kind  
9 of just on the brink of adolescence. Is there anything  
10 about her outwardly that's changing?

11 A. I noticed that she wasn't having any social  
12 interaction with children her own age. I questioned her  
13 about that.

14 Q. Okay. When you asked her about that, did any  
15 of her responses talk about Josh?

16 A. Yeah. She talked about Josh frequently.

17 Q. I guess what I'm asking is when you asked her  
18 why aren't you hanging out with kids your own age, what  
19 did she tell you?

20 A. She told me that there weren't any kids at  
21 Johnson she wanted to hang out with.

22 Q. During that conversation or any conversation  
23 around that time period, did you ask her why she is  
24 hanging around the Josh all the time?

25 A. Because he was like a big brother to her.

1 Q. So that was --

2 A. That was her statement to me.

3 Q. So by this time Josh has been around a couple  
4 of years?

5 A. Yes.

6 Q. And probably some circumstances helpful to  
7 picking her up from school, giving a break with some  
8 stuff?

9 A. Yes.

10 Q. Did you have any suspicions at that time  
11 anything inappropriate was going on?

12 A. No.

13 Q. In 2012?

14 A. No.

15 Q. I want to turn your attention to early 2013.  
16 Was there a planned San Francisco trip?

17 A. Yes.

18 Q. Who was suppose to go on that trip?

19 A. Morgan.

20 Q. Morgan alone? Morgan with you?

21 A. Morgan alone, but there was questions -- or I  
22 was approached by Joshua asking to go to San Francisco to  
23 meet her family and I said no.

24 Q. What was Joshes' reaction when you said no?

25 A. He laughed at me.

1 Q. He laughed at you?

2 A. Yes.

3 Q. Did he have any commentary to go along with  
4 the laugh?

5 A. He told me that he and Morgan were just friend  
6 and age doesn't matter.

7 Q. Did he ultimately go on that trip?

8 A. Not to my knowledge.

9 Q. Now, through early 2013, how -- what is the  
10 communication between Josh and Morgan?

11 A. Communication, there were still phone calls,  
12 text messages.

13 Q. Is Josh still coming to your home?

14 A. Yes.

15 Q. How often is he coming to your home?

16 A. Several times a week.

17 Q. Is he still picking Morgan up from school?

18 A. Yes.

19 Q. During this year any permission to ever take  
20 her to the SunCoast or Rampart Casino? Did you grant him  
21 permission to do those things during that year?

22 A. No.

23 Q. Did you -- during the course of Morgan's  
24 school years, were there any days that you were aware of  
25 that Morgan told you she was sick and she had Josh Honea

1 pick her up?

2 A. Not to my knowledge.

3 Q. Is that -- did you ever grant her permission  
4 to stay home from school and have Josh Honea pick her up  
5 and take her somewhere?

6 A. No.

7 Q. When -- through 2013 and 2012, when Josh would  
8 pick Morgan up from school, would he be at your home when  
9 you got home sometimes, if you remember?

10 A. I don't recall at the moment.

11 Q. Do you recall starting to see anything  
12 different in Morgan's room around this time?

13 A. Yeah. Around 2013, I noticed pictures of Josh  
14 in frames.

15 Q. I'm going to show you some admitted pictures  
16 Ms. Savage. You just let me know if you have seen any of  
17 these pictures in Morgan's room, or in her photos album,  
18 on her phone, ever see pictures of Morgan and Josh?

19 A. Okay.

20 Q. State's admitted -- have you seen this  
21 picture?

22 A. No.

23 Q. Showing you a collage in State's admitted 83.  
24 Is that something you have ever seen pictures of Josh and  
25 Morgan?

1 A. No.

2 Q. State's admitted 84, Carlsbad, California  
3 blazoned on the top. Have you ever seen that before in  
4 any of Morgan belongings?

5 A. No.

6 Q. Showing you State's admitted 85. With the  
7 draft, I'm truly sorry. I hate not having you. I regret  
8 what I have done. Love you. Have you seen those pictures  
9 in Morgan's belongings?

10 A. No.

11 Q. Do you have -- well, never mind. I won't ask  
12 you that.

13 State's admitted 87. Have you seen those in  
14 Morgan's belongings?

15 A. No.

16 Q. State's admitted 88. Have you seen those in  
17 Morgan's belongings?

18 A. No.

19 Q. Did you ever witness Morgan and Mr. Honea  
20 doing anything sexual that caused you concern?

21 A. No.

22 Q. Whether it be a glance, a touch, a grab,  
23 anything like that?

24 A. No.

25 Q. Showing you State's admitted 89. Is that a

1 picture you have ever seen of Morgan and Joshua?

2 A. No.

3 Q. Do you remember a Mt. Charleston trip with  
4 Josh Honea and Morgan, if you remember?

5 A. I'll trying to recall. I don't at this  
6 time.

7 Q. Okay. Looking at State's admitted 90, if you  
8 don't -- if you don't recall the trip can you -- do you  
9 have an idea as Morgan's mom how old she was in that  
10 picture?

11 A. Well, she's wearing her braces. I would have  
12 to say that would have to be winter of 2013.

13 Q. So December 2012 into January 2013, is that  
14 what you mean through the next fall, if you know?

15 A. I'm looking -- I remember her face. I would  
16 have to say to best of my memory that would be like early  
17 2013.

18 Q. So she would have been 14 then -- sorry, early  
19 13 years old. State's admitted 92, is that a photograph  
20 you have ever seen in Morgan's belongings?

21 A. No.

22 Q. State's admitted 92, ever seen that in  
23 Morgan's belongings?

24 A. No.

25 Q. How about this collage in 94. I know you



1 didn't see the individual pictures, but did you ever see  
2 that collage in any of Morgan's belongings or replicated  
3 for a Christmas card or anything like that?

4 A. No.

5 Q. How about this one, State's admitted 95.  
6 Merry Christmas, Baby. Did you ever see that one?

7 A. No.

8 Q. The Defendant was at your home. The Defendant  
9 was at your house lots of times?

10 A. I'm sorry.

11 Q. Was Defendant, Josh Honea, at your home a lot  
12 of times over 2012, 2013, 2014?

13 A. Yes.

14 Q. Did he ever assist or monitor your daughter  
15 getting ready for to go out or anything like that?

16 A. Yes.

17 Q. Tell me about that?

18 A. He would come over to our home, and he would  
19 stand in her bathroom door way watching her put on her  
20 make up, prepare her hair. I asked him why he would stand  
21 there. Take a seat in the living room.

22 Q. Showing you State's admitted 109, is that a  
23 picture you have ever seen before?

24 A. No.

25 Q. Do you recognize at all any events or anything

1 Morgan may have been wearing that flannel shirt to?

2 A. I don't recall.

3 Q. Showing you admitted State's 110, is that a  
4 picture you have seen before?

5 A. No.

6 Q. Is that your bathroom at your house or  
7 Morgan's bathroom? Can you tell from that photo?

8 A. I can't tell from that photo. It looks like  
9 the bathroom door, but --

10 Q. What about the vase on the counter, does  
11 that look familiar at all, something that might be  
12 decorations in your home?

13 A. Yes. I recognize that vase now. That would  
14 have been her bathroom. It was a leopard print candle  
15 vase.

16 Q. Permission for any of this conduct to go on in  
17 your home?

18 A. None.

19 Q. Showing you State's admitted 102. Is this a  
20 photograph you have seen before?

21 A. No.

22 Q. State's admitted 104, is this anything you  
23 have seen before?

24 A. No.

25 Q. Getting you back to that plaid photograph,

1 that plaid shirt that Morgan is wearing. Showing you  
2 State's admitted 111. Is there anything about that  
3 photograph that causes you to remember events that Josh  
4 and Morgan may have attended? I don't want you to  
5 speculate. Just if you know.

6 A. I don't know.

7 Q. When -- now in 2013, was Josh giving Morgan  
8 advice about college or career paths or anything like  
9 that?

10 A. Yes. There was a discussion in my home, we  
11 were in the dining room, and he -- she was talking about  
12 wanting to become a nurse or a veterinarian because of her  
13 love for animals. He told her in front of me that she  
14 could volunteer with paramedics once she was 16, and that  
15 even if she did go to college, she was going to be married  
16 and stay at home, mother, with children.

17 Q. How did you react to this man telling your  
18 child what she is going to do in your home?

19 A. I was not happy. I told him straight out, I  
20 am the parent and she is my child. If she wants to have a  
21 career of her choice, that's what is going to happen. And  
22 he had no position to tell her what she was going to do.

23 Q. So around this time, you said previously  
24 pictures of Defendant start appearing in Morgan's room.  
25 You have had these conversations where he is imparted

1 direction, I guess, about career paths. What else is  
2 going on between Josh and Morgan at that time?

3 A. There were frequent trips to like, Walmart.  
4 He would ask her to go to Walmart with him, but there was  
5 a Walmart not far from my house, like Charleston and  
6 Decatur, but he told me that he preferred going to the one  
7 at Tropicana and Fort Apache, because too many of the  
8 students from Johnson Middle School went to the one at  
9 Charleston and Decatur.

10 Q. In hindsight does that sound odd to you?

11 A. I had questions in my mind about it, yes.

12 Q. Again, at this time, are you concerned that  
13 there is anything sexual going on between Josh and  
14 Morgan?

15 A. No.

16 Q. Given that you put her on birth control have  
17 you questioned Morgan, are you having sex with Josh? Is  
18 something going on?

19 A. I did question her. She assured me that  
20 nothing was going on.

21 Q. Did she in any of those conversations go so  
22 far as to tell you that Josh Honea was gay?

23 A. She did say he was gay.

24 Q. Were -- did Joshua Honea request, suggest,  
25 demand or somehow or other encourage Morgan to go to his

1 house and clean his room for him?

2 MS. MCNEILL: Objection. One it's leading. Two  
3 it calls for hearsay.

4 THE COURT: Sustained.

5 BY MS. KOLLINS:

6 Q. Did Morgan clean Joshes' room?

7 MS. MCNEILL: Objection, foundation as to how  
8 she would know.

9 MS. KOLLINS: Granting her child permission is  
10 how she would know.

11 THE COURT: The objection is going -- I do  
12 understand the concern about the leading question. I did  
13 sustain that. I think we are switching into a new area.  
14 If you want to set up a foundational basis for this, Ms.  
15 Kollins, I'll give you leeway.

16 Overruled on the objection.

17 BY MS. KOLLINS:

18 Q. Is Mr. Honea and your daughter continuing to  
19 have contact?

20 A. Yes.

21 Q. What kind of things are they doing together  
22 that you are permitting Morgan to do?

23 A. Family dinners. She would go to his house.  
24 Parents were home.

25 Q. That is what you were told?

1           A.       Right.

2                   MS. MCNEILL:  Objection to the insinuation, your  
3 Honor.

4                   THE COURT:  You can ask her how she knows.  I'll  
5 advise the witness there may be objections coming from  
6 counsel.  Pause before you give your answer so I may rule.  
7 Thank you.

8                   THE WITNESS:  Okay.

9 BY MS. KOLLINS:

10           Q.       You said family dinners when his parents were  
11 home.  What was the other thing?

12           A.       She told me that she was cleaning Joshes'  
13 bedroom and because I had contacted her myself and asked  
14 when she was coming home.  I'm almost done cleaning  
15 Joshes' bedroom.

16           Q.       That was one time, more than one time?

17           A.       It happened more than once.  She told me  
18 herself.

19           Q.       When, during this time frame when Josh and  
20 Morgan would have -- there was a plan to do something, how  
21 would that plan be executed?

22           A.       The plan would be that Morgan would ask me.

23           Q.       When Morgan asked you would you take Morgan  
24 somewhere and drop her off to Joshua, or did Joshua come  
25 to your home and pick her up?  How did they get together to

1 make the plan happen?

2 A. It happened both ways. There were some  
3 occasions where I took Morgan to Joshes' parents' house.

4 Q. On balance which happened more often, Josh  
5 picking her up or you dropping her at Joshes' parents?

6 A. Josh coming to home to pick her up.

7 Q. That would be times outside of him dropping  
8 her off after school, things like that. This would be  
9 separate pick-ups?

10 A. Separate, yes.

11 Q. Where did Morgan spend Christmas that year?

12 A. In 2013, I recall she spent it at Joshes'  
13 house.

14 Q. With?

15 A. With Joshes' parents, sister, grandparents.

16 Q. Were you there?

17 A. No.

18 Q. Is that what you were told?

19 A. Yes.

20 Q. By whom?

21 A. Morgan.

22 Q. What about Josh?

23 A. I don't remember Josh saying that.

24 Q. Did you attend church with Morgan?

25 A. Yes.

1 Q. Where did you attend church?

2 A. Shadow Hills Church.

3 Q. What was your routine attending that church?

4 A. Every Sunday morning, this started January  
5 2014, we would attend the 8:45 church service.

6 Q. Did someone eventually join you and Morgan at  
7 church?

8 A. Yes. It was like 2 to 3 weeks after Morgan  
9 and I were going on a regular basis, Josh would follow us  
10 to church and sit next to Morgan.

11 Q. Did you invite him?

12 A. No.

13 Q. Did he begin to attend them routinely with  
14 you?

15 A. Every week, yes.

16 Q. Was Morgan involved in any others church  
17 activities at that time?

18 A. Yeah, she was. She attended is youth bible  
19 study after the 8:45 service. And then she was involved  
20 in Wednesday night youth activities at the church.

21 Q. Those youth activities, were those age  
22 appropriate for Josh Honea?

23 A. No.

24 Q. How long did Morgan do the Wednesday night  
25 church, Sunday service?



1           A.       It was consistent throughout 2014 into 2015.

2           Q.       Did she still continue to do Explorers  
3 sometimes?

4           A.       Yes.

5           Q.       What from your observations as a mom, as much  
6 as you can be around a teenager, what interaction are you  
7 seeing between Morgan and Josh in terms of communication?  
8 What do you see?

9           A.       I see them together more frequently,  
10 physically together.

11          Q.       How are they communicating with each other?

12          A.       It was very controlled conversation. It was  
13 more directing Morgan what to do and how to dress.

14          Q.       I guess what I'm asking you is before you  
15 testified that there was kind of a cycle of texting,  
16 arguing, things like that. Did that continues in 2014, is  
17 what I'm getting at.

18          A.       I do confirm that continued.

19          Q.       Did you -- I know it's 3 years ago. You can't  
20 remember every single argument, but what would Morgan's  
21 general demeanor be after these arguments?

22          A.       She was very distraught, upset. She would  
23 continue to cry.

24          Q.       What did you think about her being that upset  
25 over somebody that was supposed to be a brother/sister

1 relationship. Did you understand that?

2 A. I couldn't understand why she would be that  
3 upset if it was a brother/sister relationship. She didn't  
4 get that upset with her own brother and sister.

5 Q. So did you take any action at that point or  
6 any other time when they had one of these fights and she  
7 is really distraught to delve into what was going on?

8 A. I did question her. She wasn't forthcoming  
9 with the reason why. I continued to encourage her to seek  
10 out friends her own age and move past his relationship.

11 Q. At this time, early 2014, is she finishing 8th  
12 grade, right?

13 A. That would be right.

14 Q. Is she hanging out with people her own age?

15 A. No.

16 Q. Does she have girlfriends around all the time  
17 or not so much?

18 A. No. She was isolated.

19 Q. When -- you said Josh continues to pick her up  
20 at your house?

21 A. Yes.

22 Q. When Josh would pick her up when activities  
23 would take place did Josh ever arrive with anyone else or  
24 did he always arrive alone?

25 A. I don't recall him arriving with anybody

1 else.

2 Q. Okay. Maybe this is a good point to ask you  
3 this.

4 Josh told you he doesn't date girls up to this  
5 point. In 2014 does Josh talk to you about other females  
6 he is dating or see him with peers or age appropriate  
7 women?

8 A. No. No. I don't recall.

9 Q. Now, Morgan is about to go into high school  
10 the summer of '14, would that be correct?

11 A. Yes.

12 Q. How old would she have turned?

13 A. She would have turned 15.

14 Q. Where were you zoned for her to go to high  
15 school?

16 A. I was originally zoned for Bonanza High  
17 School.

18 Q. Was a decision made to switch Morgan somewhere  
19 else?

20 A. Yes.

21 Q. Where was that?

22 A. Desert Oasis High School.

23 Q. Was that decision that you made as her parent  
24 or did you and Morgan make it together?

25 A. Morgan and I made it together.

1 Q. Why did you make that decision together?

2 A. Because she wasn't comfortable with going to  
3 Bonanza High School.

4 Q. What about Bonanza at that point was making  
5 her uncomfortable?

6 A. Because of the students that she thought were  
7 bad students at Johnson Middle School.

8 Q. What efforts did you have to take to get her  
9 into Desert Oasis?

10 A. I had to get a zone variance from the school  
11 district. I had to provide my own transportation.

12 Q. Did you do that?

13 A. Yes, I did.

14 Q. Was that an easy process or did that --  
15 getting the zone variance and going through the school  
16 district? Was that an easy process?

17 A. Not an easy process. You have to have a  
18 reason and there was a curriculum. I can't recall the  
19 exact curriculum that Desert Oasis offered. It had to do  
20 with sports medicine or something along that line.

21 Q. Morgan was interested in?

22 A. Yes.

23 Q. You get her in into Desert Oasis. Is there  
24 still interact with Josh?

25 A. Yes.

1 Q. Tell me about that?

2 A. It was open house at her school at Desert  
3 Oasis and he insisted on coming with Morgan and I to go  
4 meet her teachers, visit the class is what they do at open  
5 house.

6 I told him he didn't need to come with us, but he  
7 insisted. He drove himself. Met us there. Followed us  
8 around. Met the teachers. Was walking close to her and I  
9 tried to stay next to her. It made me irritated that he  
10 would insist on coming to an open house.

11 Q. You know, Ms. Savage, a lot of people are  
12 going to wonder why you weren't just -- your radar wasn't  
13 going off. You witnessed this interaction happening.  
14 Tell me why you continued to let the kid be around Morgan,  
15 or man I should say.

16 A. I didn't know. I don't know how to recognize  
17 these situations of somebody that would be interested in a  
18 child. I don't know how to recognize that.

19 I'm a parent. I do the best to provide for her and  
20 love her, offer her guidance, but I was continually  
21 assured by both Morgan and Joshua that they were just  
22 friends.

23 Q. After Morgan goes to Desert Oasis, what is the  
24 nature of her relationship with Josh? How are they  
25 getting along in this purported friendship at that time?

1           A.       Still continuing to be arguments, phone calls,  
2 text messages.

3           Q.       Was Morgan changing her social life at all  
4 when he got to Desert Oasis?

5           A.       I encouraged her to meet new friends her age.  
6 She was in high school now.

7           Q.       Was she making new friends beginning of 9th  
8 grade?

9           A.       Yes.

10          Q.       Was that different then how she had been  
11 previously?

12          A.       Yes.

13          Q.       Did she meet a boy she began to date at Desert  
14 Oasis?

15          A.       Yes. She met a boy that was in one of her  
16 classes. He was a football player.

17          Q.       If you know, what happened to that friendship  
18 or that relationship -- I'll call it a relationship --  
19 with the guy named Franco?

20          A.       It ended abruptly. She just told me that they  
21 were no longer dating.

22          Q.       After she told you that they were no longer  
23 dating, did you see Joshua Honea around?

24          A.       Yes. He was coming to my home.

25          Q.       Was the frequency that he was around when

1 Franco and Morgan were dating the same as after they were  
2 dating? Do you understand my question?

3 A. If I understand it correctly, yes. Joshua was  
4 involved with Morgan on a frequent basis before Franco and  
5 then it reassumed the same after Franco.

6 Q. In the middle of this abrupt finish of Franco  
7 and Morgan?

8 A. Yes.

9 Q. Did you Morgan go to homecoming for her  
10 freshman year at Desert Oasis?

11 A. She was planning to go and she didn't.

12 Q. She was -- do you know who she was planning to  
13 go with?

14 A. Franco.

15 Q. At any time around there, did you have a  
16 discussion with Joshua about homecoming?

17 A. I did talk to him about it. She needs to go  
18 to homecoming and experience that as a high school event  
19 and memory, and Josh told me that only bad kids went to  
20 homecoming and wouldn't be right for her to go.

21 Q. Before or after Franco, sometime in that time  
22 frame, does Josh make some inquiry about living  
23 arrangements in your house?

24 A. Yes, he did. He asked me if he could rent a  
25 room from me because his parents were getting divorced and

1 his mother and sister were moving out. I told him, no. I  
2 can't have anybody live with me and my daughter.

3 Q. Now, what was his response to that?

4 A. I don't think he was happy with me. He  
5 couldn't understand why I would not be comfortable with  
6 having a roommate when I have a child. It's our home.

7 Q. Soon after the dissolution of the friendship  
8 with Franco and now Josh is around more often, is there a  
9 decision made about where Morgan is going to attend high  
10 school?

11 A. Yes. I withdrew her from Desert Oasis and  
12 enrolled her at Bonanza.

13 Q. Did you have any conversation with Josh Honea  
14 prior to making the decision to move Morgan back to  
15 Bonanza High School?

16 A. I don't recall a discussion.

17 Q. Did Josh have an opinion about what high  
18 school Morgan should attend?

19 A. Not that I recall.

20 Q. I want to move to early 2015. What was the  
21 status of Morgan and Joshes' friendship?

22 A. It was still argumentative. Morgan informed  
23 me January -- January, February time frame that she cut  
24 off all communications with Joshua.

25 Q. Was Morgan at that point when she told you



1 that she had cut off all communications with Joshua, was  
2 there a single fight or single reason that prompted her to  
3 cut that off?

4 A. She told me that she wanted to be with friends  
5 her own age.

6 Q. When Morgan cut off communication, what else  
7 happened?

8 A. She began to receive phone calls, text  
9 messages from Joshua. Then his family members started  
10 calling and texting her as well, why aren't you my friend.  
11 Joshua then tries to call my phone. He sends me text  
12 messages. I don't understand. I was her friends. What  
13 did I do.

14 Q. Does he want you to talk to Morgan for him?

15 A. Yes. He did want me to talk to Morgan and  
16 find out why she ended his friendship. And I told him  
17 just to leave us alone.

18 Q. Now this point is there a gym membership that  
19 either Josh or Morgan share or they're both going to the  
20 gym or something like that?

21 A. There was a gym membership.

22 Q. Did that become a point of contention when  
23 Morgan blocked Josh?

24 A. It did. He contacted me. I paid off the  
25 contract for Morgan.

1 Q. When Morgan blocked Josh and said she's  
2 getting text messages and phone calls, you also said she's  
3 getting contacted by member of Mr. Honea's family. Do you  
4 know which family members of Mr. Honea's family?

5 A. Yes, it was his mother, his grandparents. And  
6 there were some Explorers. I don't know the Explorers'  
7 names that were contacting her as well.

8 Q. During this time when Morgan had blocked  
9 Joshua do you see Josh in the vicinity of your home?

10 A. As a matter of fact, he would drive by.

11 Q. What would he be driving at that time?

12 A. At that time he was driving a blue Ford pickup  
13 truck. It was a 4 by 4.

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

16 A. It was several times. It continued for a two  
17 week time period. I would see him drive by, slow down.  
18 My balcony faced the side street.

19 Q. What did you -- what did you think about this  
20 constant trying to get in contact with your daughter?

21 A. That created concern for me. I told him that  
22 was harassing, that's stalking. Just to -- he needs to  
23 stop or I was going to have to file a police report and  
24 get a restraining order.

25 MS. KOLLINS: Showing Defense 51, 52, and 53,

1 marked for purpose of identification.

2 Showing them to the witness in order of 51, 52, 53,  
3 and 54. With the court's permission, may I approach.

4 THE COURT: You may.

5 BY MS. KOLLINS:

6 Q. I'm going to show you a series of documents,  
7 State's Proposed 51 through 54. Please ignore my post-its  
8 on them. That just makes me not get them confused for the  
9 court or for our purposes. I would just ask you to look  
10 at State's 51 through 54, then I'll have questions for you  
11 about them.

12 THE COURT: To clarify for the witness' review.  
13 This is to see if you recognize or are familiar with it,  
14 not to digest them.

15 THE WITNESS: Okay.

16 BY MS. KOLLINS:

17 Q. As to State's Proposed 51, do you recognize  
18 that one?

19 A. Yes.

20 Q. How about 52, the one you're flipping through  
21 now?

22 A. Yes.

23 Q. Okay. Then the next one is State's 53. If  
24 you recognize that conversation at least initially on the  
25 first couple of pages?

1           A.       Yes, I do.

2           Q.       And I think there is one more for you. That  
3 would be 54?

4           A.       Yes.

5           Q.       And how is it you recognize what have been  
6 copied and preserved into State's 51, 52, 53, and 54?

7           A.       I gave them my cell phone.

8           Q.       Did they represent a conversation?

9           A.       Yes.

10          Q.       A conversation with whom?

11          A.       Detectives with Las Vegas Metropolitan Police  
12 Department.

13          Q.       Are they text messages between you and  
14 detectives?

15          A.       No.

16          Q.       They are text messages between you and --

17          A.       Me and Joshua.

18          Q.       In what time frame?

19          A.       It was February. I would say January, like  
20 January into early February.

21          Q.       2015?

22          A.       2015, yes.

23          Q.       Do they fairly and accurately depict the  
24 copies of the text messages you gave to Las Vegas  
25 Metropolitan Police Department?

1           A.       Correct.

2                   MS. KOLLINS:  Move for admission of 51 through  
3 54 and ask for permission to publish.

4                   MS. MCNEILL:  No objection.

5                   THE COURT:  State's 51, 52, 53, 54 will be  
6 admitted.  You may publish as needed Ms. Kollins.

7 BY MS. KOLLINS:

8           Q.       Now, at this period of time is Josh telling  
9 you -- well, Morgan stopped talking to him is January,  
10 February?

11           A.       Yes.

12           Q.       Does Josh begin to talk to you about Morgan's  
13 activities?

14           A.       Yes.

15           Q.       Does he do that in text messages?

16           A.       Yes.

17           Q.       Showing you -- can you see that on the screen,  
18 Ms. Savage?

19           A.       Yes.

20           Q.       Correct me if I'm wrong.  This is from late  
21 January 2015?

22           A.       Correct.

23           Q.       Says January 26th, 10:48 a.m.  Is this a text  
24 message you received from Joshua?

25           A.       Yes.

1 Q. Read it into the record for me.

2 A. Hello. I feel like as a good friend I should  
3 tell you why Morgan and I haven't been on such good terms  
4 lately. She has been getting back into the drug scene  
5 with friend Taylor and they smoke marijuana and were  
6 hanging out. I am honestly concerned about it because she  
7 said she genuinely enjoys it. She's been talking to me  
8 about it. I have been trying to show her the negative  
9 effects that could have on life.

10 Please don't tell her I told you, because she would  
11 be really mad at me and probably wouldn't be my friend  
12 anymore, which I definitely don't want. But since you are  
13 her mom and I'm really close with you guys, the right  
14 thing to do is tell you. Please don't be mad at me.

15 Q. After this text with Josh do you have  
16 discussions with Morgan about it?

17 A. Yes.

18 Q. What is the result of that? D you tell her  
19 she can't smoke weed. You can't live in my house?

20 A. I questioned her about smoking weed.

21 Q. Now, does Josh continue to text you  
22 surrounding that topic?

23 A. Yes. More on that topic.

24 Q. What did you say there?

25 A. You are not upset with me in any way, right.

1 Q. You tell him?

2 A. No. I'm good with you.

3 Q. What does he go on to tell you?

4 A. Okay. Good. I was actually nervous to tell  
5 you because I wasn't sure if you'd be mad at me or not.  
6 She has just changed a lot since she started hanging out  
7 with Taylor again, because Taylor was a bad influence when  
8 she did it the first time. Now it seems she's being a bad  
9 influence again. But I'm glad you are okay with me and  
10 hope she will come to you and tell you. I know if she  
11 find out I told you she wouldn't talk to me anymore.

12 Q. So she cut him off, blocked him from  
13 communication, does he tell you where he's getting this  
14 information that Morgan is smoking pot and hanging out  
15 with Taylor? If Morgan hasn't been talking to him, does  
16 he tell you where he's getting this information?

17 A. He didn't share that information with me.

18 Q. Were you aware at any time, did Morgan express  
19 any concern about him checking her Internet or checking  
20 her social media, if you know, if you remember?

21 A. Not at that time I don't recall.

22 Q. Going on to the last text packet.

23 Does he talk to you in text message about Taylor's  
24 parents having a medical marijuana card?

25 A. Yes.

1 Q. What did he say about that?

2 A. He said, Hi. So Taylor's parents have a  
3 medical card and can have 7 plants or so at their house.  
4 That's how Morgan is getting it when she would go there.  
5 But supplying it to juveniles is a felony, I believe. I'm  
6 trying to discourage her from being involved in that, but  
7 she's not seeing how bad a grow house is. She still wants  
8 to go there.

9 Q. Does he also in one of his text messages, that  
10 same string, talk to you about arranging a fake bust of  
11 Morgan's teacher Less or some of his officer friends?

12 A. He says, and my officer friends suggested she  
13 needs a good scare to scare her away for good get. So  
14 maybe I can get with you and plan a fake arrest and show  
15 her what could happen if she continues to be involved in  
16 weed.

17 Just like I do with the drunk driving thing at the  
18 high schools. How do you feel about that.

19 Q. How do you feel about that now?

20 A. I don't feel --

21 MS. MCNEILL: Objection to relevance.

22 MS. KOLLINS: Well, she can have an opinion  
23 about this grown man requesting --

24 MS. MCNEILL: Testifying. Approach.

25 THE COURT: The court did ask for a response.



1 (Discussion held at the bench.)

2 THE COURT: Sustained.

3 BY MS. KOLLINS:

4 Q. What did you think when this grown man is  
5 texting you to stage a fake arrest for your daughter?

6 A. At that time I didn't know what to think. I  
7 didn't have proof that she was involved with smoking weed,  
8 so why should we do it. How did he know?

9 Q. Does that sound extreme to you?

10 A. Yes.

11 Q. I would like to turn your attention to around  
12 June 29th, a text exchange, admitted 52. Mr. Honea is  
13 asking permission to take Morgan somewhere. Do you recall  
14 that conversation?

15 A. Yes.

16 Q. Were you granting permission for her to go?

17 A. No.

18 Q. What was Mr. Honea's response to that? This  
19 is admitted 52.

20 A. He said, okay. Well, when I asked her the  
21 other day she said yeah, so my friend's parents made  
22 reservations for everyone for his birthday. I didn't know  
23 it would be a problem. Sorry. Did I do something  
24 wrong.

25 Q. Do you grant him permission in this

1 conversation?

2 A. No.

3 Q. Does he accept you are saying no?

4 A. No.

5 Q. Does he continue to text you?

6 A. Yes.

7 Q. Moving on in this same packet is January 31.

8 Is that Josh -- 2015 -- is that Joshua asking you to give  
9 you a call?

10 A. Yes.

11 Q. Do you know why he wants to give you a call?

12 A. No.

13 Q. You tell him, no, is that right?

14 A. I said, no.

15 Q. Does he continue to try to speak to you?

16 A. Yes.

17 Q. At the bottom there, what does it say?

18 A. Okay. Well, I'm looking for advice from you,  
19 so when you get a chance please call me.

20 Q. You say, okay. Do you make a phone call to  
21 him after that?

22 A. No.

23 Q. Then the string resumes and say, not a good  
24 idea to come over, right?

25 A. Correct.

1           Q.       What information did you have that he wanted  
2 to come over when you sent that text? Had you spoke to  
3 him? Was he speaking to Morgan? What context did you say  
4 it's not a good idea to come over, if you remember?

5           A.       Because I didn't want him in my home or around  
6 Morgan.

7           Q.       At this time does Morgan still got him  
8 blocked?

9           A.       Yes.

10          Q.       Then Mr. Honea says, he needs a radio,  
11 right?

12          A.       Yes. He says, she has my radio and everything  
13 that I need.

14          Q.       Do you let him come over or tell him you'll  
15 bring his stuff?

16          A.       I told him that I would bring it down and meet  
17 him outside the front gate.

18          Q.       What's his response to I will bring it to you?  
19 What does he say there?

20          A.       Why won't she talk to any of us. My  
21 grandmother is sick to her stomach because she is ignoring  
22 us.

23          Q.       At that time did you know that his family had  
24 contacted Morgan?

25          A.       She told me, yes.

1 Q. You tell him what?

2 A. I told him she is fine. Don't worry.

3 Q. Does he let it go or continue?

4 A. He continues with the messages. I know but  
5 why won't she talk to us. We can talk it over with me,  
6 when I get there. I told him I don't have time today. I  
7 have a lot going on.

8 Q. What does he say?

9 A. Did I do something that bad to her. She is  
10 practically family will be the say way with my sister.  
11 I'm trying to fix the situation and she can be my friend  
12 again.

13 Q. What do you tell him?

14 A. I'm sorry, but I can't be in the middle of the  
15 situation.

16 Q. You send a response. Read that into the  
17 record for us.

18 A. Okay. Well, you know, whenever she is with me  
19 she makes good choices. Like 10 minutes ago she texts me  
20 saying she gets it, but still not changing her mind about  
21 hanging with Taylor. But it's not locked up or anything.  
22 Taylor smokes it all the time and every time we are  
23 together. I try to tell her also if she is around when  
24 Taylor is smoking, she would still get a contact high  
25 because it's in the air.

1 Q. Does that text message continue?

2 A. She seems to think jobs will stop drug testing  
3 because it's medical marijuana, not legal.

4 Q. Does he continue to talk to you?

5 A. Yes.

6 Q. This is admitted 52, Ms. Clerk.

7 Now after that set of text messages you also turned  
8 over a set that is from late June and goes through  
9 February 2nd. That would have been State's admitted 53.  
10 I just want to show you a couple of those.

11 Can you see that.

12 A. Yes.

13 Q. Is that from Joshua?

14 A. Yes.

15 Q. What the text?

16 A. Will you tell her to talk to me like an adult  
17 and tell me what I did, please. I thought out of  
18 everything I've done for her I would at least get that.

19 Q. What do you tell him?

20 A. I told him she isn't up to talking with  
21 anyone. She's fine.

22 Q. Does he accept that?

23 A. He said, okay. So if you were me -- no, I  
24 don't think he accepted it, because he is said -- so, if  
25 you were me, would you let your best friend walk out of

1 your life without knowing anything, or how would you  
2 handle it, because I have no clue what to do.

3 Q. What do you tell him?

4 A. Sometimes it is just best to let go.

5 Q. Does he let go?

6 A. He keeps texting. Says, I'm not sure why  
7 though. That's what's bothering me.

8 Q. Sometimes there isn't a reason.

9 So she just woke up one morning and pushed me out.  
10 I even have a year left to pay for the gym membership.

11 I can't get between the situation. I tried to talk  
12 to you both out of the gym membership. I don't have any  
13 answers. I'm at a loss for words.

14 Q. Then if you can read the bottom.

15 A. Okay. Well, if anything --

16 Q. That is Josh on the next page.

17 A. Please, please, please encourage her to be my  
18 friend again.

19 I said I will talk to her about it.

20 Okay. Thanks.

21 Q. On February 2nd you send a text to Josh What  
22 does that say?

23 A. I'm only going to say this once. Please  
24 respect this. Stay away from me and my daughter You're  
25 stalking and harassing phone calls and texts are done.

1 Stop having others call and text her as well. Goodbye.

2 Q. What prompted you to send that text?

3 A. Because that's when he was driving by my home  
4 and family members continued to call Morgan on her phone.  
5 He continued to call.

6 Q. Then in that string, at least one more time,  
7 you tell him stay away?

8 A. Yes.

9 Q. Read all of these into the record.

10 I'm not going to take you to February 18th. So  
11 that's a couple of weeks after the first text. What do  
12 you tell him?

13 A. I'm not telling you again. Stop contacting my  
14 daughter. Get out of our lives. I know how to file a  
15 police report and get a restraining order due to your  
16 continued contact, harassment and threats to a minor. Do  
17 not contact me either. Goodbye.

18 Q. Then in between that last -- the last 2 were  
19 kind of emphatic texts. This one is the context  
20 continuing between Josh and Morgan?

21 A. Yes.

22 Q. Did -- what is his response to this last  
23 February 18th?

24 A. He said, well, I haven't threatened anyone.  
25 She wants me to pay the gym, and I won't. I can't see the

1 rest of it.

2 I don't see how you expect me to pay for her. All  
3 I want is my radio back and gym card. Let me have that  
4 please.

5 Q. You make arrangements?

6 A. I did.

7 Q. To get his stuff back and take over the gym  
8 contract; is that fair?

9 A. Yes.

10 Q. He states -- admitted 54 has duplicate pages  
11 of 53, but it has already been admitted.

12 When you ward him off does that work for awhile?  
13 Does he stop contacting Morgan? Does the contact lighten  
14 up a little?

15 A. The contact lightened up, then around April  
16 2015 Morgan didn't indicate that he was contacting her.

17 Q. Were you aware of a time in the spring of  
18 2015, either near the time you were sending him these  
19 warnings to stay away, where he showed up at Morgan's  
20 middle school, high school?

21 A. He did show up at Bonanza.

22 MS. MCNEILL: Objection to how she knows. Is it  
23 personal observed. It's hearsay.

24 THE COURT: What's the foundation.

25 MS. KOLLINS: Based on statements prior to Ms.



1 Savage.

2 THE COURT: Can I have counsel at the bench.

3 MS. KOLLINS: Sure.

4 (Discussion held at the bench.)

5 THE COURT: Objection overruled.

6 BY MS. KOLLINS:

7 Q. During the time frame where Morgan has cut him  
8 off and you have had all of these texts, do you learn from  
9 Morgan that Josh shows up at her high school?

10 A. She did tell me he showed up.

11 Q. Did she come home from school and tell you  
12 that?

13 A. She sent me a text.

14 Q. Was she happy about that?

15 A. No. She told me she was very upset because  
16 she would go -- every day she would go to the dean's  
17 secretary's office and have lunch with her and then Josh  
18 would showed up and she was very upset because the dean's  
19 secretary did not tell her that Josh was coming that day.  
20 So she walks in to the dean's office and he is there.

21 Q. That caused her to be distraught?

22 A. It caused her to be distraught.

23 Q. Before we wrap up, did you give Morgan an  
24 engagement ring that was yours when you were married to  
25 your father?

1 A. Yes, I did.

2 Q. Showing you admitted 108. Is that the ring,  
3 if you remember?

4 A. Yes.

5 Q. So when did you give that to Morgan?

6 A. I want to say when she was 15.

7 Q. Okay. Did you ever give it to Josh to give to  
8 her?

9 A. No.

10 Q. Why did you give this to her when she was  
11 15?

12 A. Because I wanted her to have something that  
13 was -- she would feel sentimental between me and her and  
14 her father.

15 Q. Did you ever have a conversation with  
16 Mr. Honea regarding any physical markings on his  
17 genitals?

18 A. No.

19 Q. In late March of 2015 were you contacted by  
20 the Las Vegas Metropolitan Police Department?

21 A. Yes.

22 Q. Who contacted you, do you remember?

23 A. I want to say it was Detective Dicaro.

24 Q. Did he tell you why he was contacting you?

25 A. Yes.

1 Q. What did it have to do with?

2 A. It had to do with Josh Honea and my daughter,  
3 Morgan.

4 Q. Did you agree to speak with him?

5 A. Yes, I did.

6 Q. Did you give him a recorded interview?

7 A. Yes, I did.

8 Q. Were you able to get Morgan to do a live  
9 recorded interview at that time?

10 A. I don't recall at that time.

11 Q. Do you know if Morgan had a phone conversation  
12 with the detectives?

13 A. She did have a phone conversation.

14 Q. Just after that first interview and Morgan  
15 having that phone conversation, did you have to go to  
16 court at any time just right after those conversations?

17 A. No.

18 Q. At that point did you believe, based on your  
19 discussion with your daughter and representations by  
20 Mr. Honea, there was anything sexual going on between  
21 Mr. Honea and your 15-year-old daughter?

22 A. Not at that time. That would have been March  
23 2015.

24 Q. At that point were you recontacted by Metro?

25 A. Yes.

1 Q. When was that?

2 A. I would like to say it was around June,  
3 2015.

4 Q. Did you give another interview?

5 A. Yes, I did.

6 Q. Was Morgan in Las Vegas when you were  
7 contacted by them that time in June?

8 A. I want to say, yes.

9 Q. Did she speak to them?

10 A. Yes.

11 Q. Well, did you speak to them at work?

12 A. Yes.

13 Q. Did you schedule more interviews after the day  
14 you had that interview?

15 A. Yes.

16 Q. Could it be because Morgan was out of the  
17 jurisdiction the day you spoke to them, if I remember?

18 A. Yes. Because it would have been after school  
19 was done for the year.

20 Q. When you spoke or met the second time, were  
21 you given business cards?

22 A. Yes.

23 Q. Those business cards, did those -- at least a  
24 business card contain contact information for detectives  
25 you spoke to?

1 A. Yes.

2 Q. Did you pass that information to Morgan?

3 A. I don't recall.

4 Q. Were you present for any phone calls where  
5 Morgan called the Las Vegas Metropolitan Police Department  
6 around that time in the summer of 2015?

7 A. No.

8 Q. I'm not going to go through all of this with  
9 you. You had never seen the photo album of Morgan. Have  
10 you ever seen State's admitted 76?

11 A. No.

12 Q. Was there a trip with Morgan and Mr. Honea to  
13 Carlsbad, California?

14 A. I'm not aware of Carlsbad.

15 Q. Was there a trip to San Diego Wild Animal  
16 Park?

17 A. Yes.

18 Q. Now, do you recall that trip?

19 A. Yes. I purchased Morgan's ticket.

20 Q. When you purchased Morgan's ticket, was it  
21 your understanding that Mr. Honea was going along on that  
22 trip?

23 A. Yes.

24 Q. Did you purchase Mr. Honea's ticket?

25 A. Repeat that.

1 Q. Did you purchase Mr. Honea's ticket?

2 A. I do recall purchasing both tickets.

3 Q. Was that supposed to be a group trip, those  
4 two? What was it supposed to be?

5 A. I wasn't aware of it just being the two of  
6 them.

7 Q. Were you aware it was an over-night trip?

8 A. Yes.

9 Q. Did he have permission at least to go to  
10 California with your daughter?

11 A. Yes.

12 Q. Did you write him a note on that occasion?

13 A. I don't recall.

14 Q. Did he have permission to have sex with your  
15 daughter?

16 A. No.

17 Q. If you knew the purpose for taking her to  
18 California was to have sex with her would --

19 MS. MCNEILL: Objection.

20 MS. KOLLINS: I haven't finish my question.

21 THE COURT: Wait to answer so I can rule on the  
22 objection.

23 BY MS. KOLLINS:

24 Q. If you knew his intention was to take her to  
25 California and have sex with her, would you have granted

1 your permission for him to take her?

2 THE COURT: Basis of the objection.

3 MS. MCNEILL: Withdrawn.

4 THE COURT: You may answer.

5 THE WITNESS: No.

6 BY MS. KOLLINS:

7 Q. Now, these multiple photos I showed you of  
8 Morgan and Mr. Honea, did Morgan have photo albums with  
9 her other siblings to this degree?

10 A. No.

11 Q. That trip to San Diego Wild Animal Park --

12 A. Yes.

13 Q. -- you wrote him a note?

14 A. To the best of my knowledge.

15 Q. What would that note have contained?

16 A. Just that she was able to go to the Wild  
17 Animal Park with Josh.

18 Q. Had you ever in any of the other times they  
19 had gone anywhere, dinners, Valley of Fire, had you ever  
20 written one of those notes before?

21 A. No.

22 MS. KOLLINS: Pass the witness.

23 THE COURT: Let me -- I would like to complete  
24 the witness before we have lunch. Does the jury need a  
25 restroom break.

1           Okay.

2                               JURY ADMONITION

3                       During the recess, ladies and gentlemen, you are  
4           admonished not to converse among yourselves or with anyone  
5           else, including, without limitation, the lawyers, parties  
6           and witnesses, on any subject connected with this trial,  
7           or any other case referred to during it, or read, watch,  
8           or listen to any report of or commentary on the trial, or  
9           any person connected with this trial, or any such other  
10          case by any medium of information including, without  
11          limitation, newspapers, television, internet or radio.

12                    You are further admonished not to form or express any  
13          opinion on any subject connected with this trial until the  
14          case is finally submitted to you.

15                               (Brief recess taken.)

16                    THE COURT: Ms. Savage, will you so acknowledge  
17          since we had a break, you are still under oath.

18                    THE WITNESS: Yes.

19                               CROSS-EXAMINATION

20          BY MS. MCNEILL:

21                    Q.        I'm going be brief. It's been a long 14 days  
22          for the people in this room.

23                    You want to talk a little bit to when Morgan was at  
24          Johnson Middle School. You indicated that at some point  
25          when she was attending Johnson she introduced you to Josh



1 Honea, remember that?

2 A. Yes.

3 Q. When Morgan was at Johnson Middle School were  
4 you aware she was having a lot of issues with  
5 discipline?

6 A. No.

7 Q. Let me ask you this. Do you remember getting  
8 a phone call from Johnson asking you to come in and meet  
9 with a counselor because of some behavior issues?

10 A. I'm trying to recall. Counselors, what type  
11 of Counselors.

12 Q. Counselors at the middle school asking to set  
13 up a meeting. Do you remember that?

14 A. I'm trying.

15 Q. If you don't remember.

16 A. I don't remember at this time.

17 Q. So your testimony is you were unaware Morgan  
18 was having difficulties at school?

19 MS. KOLLINS: Objection, vague.

20 MS. MCNEILL: Well, I asked her.

21 THE COURT: Overruled.

22 BY MS. MCNEILL:

23 Q. You testified previously to my question you  
24 were not aware that Morgan was having difficulties at  
25 school?

1 A. Not that I recall.

2 Q. Were you aware that Morgan, at that time  
3 period in 6th grade, had struck up a friendship with some  
4 women who were working in the dean's office at Johnson  
5 Middle School?

6 A. Yes.

7 Q. Were you aware that one of those was Dara  
8 Coleman?

9 A. Yes.

10 Q. You met Ms. Coleman before?

11 A. I'm sorry.

12 Q. You met Ms. Coleman?

13 A. Coleman?

14 Q. Well, at that time it was Coleman -- Honea?

15 A. Yes.

16 Q. Back when Morgan was in middle school --  
17 Johnson Middle School you indicated that there came a time  
18 when Josh was bringing Morgan home from school, correct?

19 A. Yes.

20 Q. Isn't it also true that Joshes' sister was  
21 bringing Morgan home from school?

22 A. At Johnson.

23 Q. When Morgan was at Johnson?

24 A. No.

25 Q. That's not true. I'm going to ask you some

1 questions about your involvement in Morgan's life at this  
2 time.

3 You were a single mother?

4 A. Yes.

5 Q. I understand that is a difficult position to  
6 be in. In this time when Morgan was in junior high, did  
7 you have difficulty making sure that she was getting  
8 picked up from school?

9 A. I had advised her she could walk home.

10 Q. If he could walk home, why would she need  
11 rides home from school?

12 A. Because she wanted a ride.

13 Q. Were you aware that oftentimes after school  
14 Morgan was going to a park and hanging out with high  
15 school kids?

16 A. No.

17 Q. No one from Johnson Middle School informed you  
18 about that?

19 A. No.

20 Q. How did you know that Mr. Honea was picking  
21 Morgan up from school? Did that come through Morgan?

22 A. He came to me and said he could give her a  
23 ride home.

24 Q. But I'm talking about generally. I think your  
25 testimony was that it was 3 or so times a week. How did

1 you know those 3 or 4 times a week he'd pick her up? Did  
2 she explain that or did you see it?

3 A. Morgan told me.

4 Q. You don't know if it was him picking her up,  
5 it came from her and you assumed it was true?

6 A. Yes.

7 Q. Raising kids is hard, right. You would agree  
8 with that?

9 A. I wouldn't agree with that.

10 Q. You don't think raising kids is hard?

11 A. I have raised children.

12 Q. Was it easy?

13 A. It's rewarding.

14 Q. You think your kids are always honest with  
15 you?

16 A. Yes.

17 Q. You think you knew everything Morgan was  
18 doing?

19 A. Everything, it's impossible to know  
20 everything.

21 Q. You think she was honest with you about things  
22 that were going on in her life?

23 A. I expected her to be honest with me.

24 Q. You expected her to, but do you think she  
25 actually was?

1 A. I did at the time, yes.

2 Q. Did Morgan ever have to ask the Honea family  
3 for food?

4 A. No.

5 Q. Because there was no food in the house?

6 A. No.

7 Q. Did Morgan have to ask the Honea's for shelter  
8 because she was left alone with no air-conditioning?

9 A. I don't recall that.

10 Q. Isn't it true that many of the times that Josh  
11 took Morgan places you gave him money to do that? To  
12 dinners, to or breakfast.

13 A. I don't recall that.

14 Q. You don't recall that?

15 A. I don't recall that.

16 Q. You indicated that Morgan told you there were  
17 no kids at Johnson she wanted to hang out with. Remember  
18 when you said that to Mr. Kollins?

19 A. Yes.

20 Q. Were you aware that Morgan started a club  
21 called the Top Notch Bitches Club and she was accused of  
22 bullying other students?

23 MS. KOLLINS: Objection, hearsay.

24 THE COURT: Overruled.

25 MS. MCNEILL: Were you aware of that.

1 THE WITNESS: No.

2 BY MS. MCNEILL:

3 Q. You indicated that you put Morgan in Desert  
4 Oasis pursuant to a zone variance, correct?

5 A. Yes.

6 Q. You were dating the assistant principal at  
7 Desert Oasis at that time?

8 A. No.

9 Q. You indicated that you were aware of her  
10 relationship with someone by the name of Franco,  
11 correct?

12 A. Yes.

13 Q. Were you aware that Franco had disseminated  
14 nude photos of Morgan among the football team?

15 A. No.

16 Q. Do you think that might explain the abrupt  
17 ending of that relationship?

18 MS. KOLLINS: Objection. Speculation.

19 THE COURT: Overruled.

20 THE WITNESS: Restate the question.

21 BY MS. MCNEILL:

22 Q. Do you think that Franco doing that might  
23 explain the abrupt ending of their relationship?

24 A. I wouldn't know.

25 Q. You indicated that there were a lot of

1 conversations between Josh and Morgan about his plans and  
2 ideas for things she should be doing. Remember that line  
3 of questioning?

4 A. Yes.

5 Q. You were there for those?

6 A. Yes.

7 Q. You saw him saying those things to her?

8 A. Yes.

9 Q. Wasn't he -- he wasn't trying to hide his  
10 opinions?

11 A. He was very forward with his opinion.

12 Q. So he wasn't trying to hide it?

13 A. No.

14 Q. Ms. Kollins asked you about Christmas of 2013  
15 and you indicated Morgan spent that with Honea family?

16 A. Correct.

17 Q. Isn't it true you came to the Honea's family  
18 that Christmas to their house?

19 A. I don't recall that.

20 Q. Do you recall that you actually asked them to  
21 keep Morgan at their house so that you could go be with a  
22 friend?

23 A. No.

24 Q. You talked about these conversations where you  
25 believed that Morgan was fighting with Josh but you have

1 no idea what the fights were about, correct?

2 A. No, I don't.

3 Q. The time that he came to the open house at  
4 Desert Oasis, you indicated that you told him he didn't  
5 need to come?

6 A. Correct.

7 Q. You have no idea if Morgan asked him to come,  
8 right?

9 A. No.

10 Q. You also indicated that he was coming to  
11 church, that he just showed up. Again you have no idea as  
12 to what Morgan had been telling him about whether or not  
13 he should come to church, do you?

14 A. No.

15 Q. You have no idea the substance of any of their  
16 communications, other than what you witnessed, right?

17 A. Correct.

18 Q. Ms. Kollins asked you some -- showed you some  
19 photos of Josh and Morgan that you'd never seen?

20 A. Yes.

21 Q. Showing you Defense Exhibit M. Have you seen  
22 that before?

23 A. No.

24 Q. Showing you Defense Exhibit N. Have you seen  
25 that before?



1 A. No.

2 Q. Showing you Defense Exhibit O. Have you ever  
3 seen that before?

4 A. No.

5 Q. Would you agree with me that it seems as if  
6 there is quite a bit about Morgan's life you are unaware  
7 of?

8 MS. KOLLINS: Objection, argumentative.  
9 Speculation.

10 THE COURT: Overruled.

11 THE WITNESS: Restate the question.

12 BY MS. MCNEILL:

13 Q. Would you agree it seems there is quite a bit  
14 of Morgan's life you are unaware of?

15 A. No. I thought I knew my child well.

16 Q. This time period that Ms. Kollins was talking  
17 to you about where she said Morgan had blocked Josh, you  
18 don't actually know if Morgan had done that, do you?

19 A. No.

20 Q. Were you aware in that time period where he is  
21 telling you that Morgan is using drugs, were you aware  
22 that Morgan was actually using drugs?

23 A. No.

24 Q. In those text messages between you and  
25 Mr. Hones he's just telling you straight out the things

1 she is doing, right?

2 A. His opinion.

3 Q. Well, his opinion is that he says she's using  
4 drugs, right, in the text messages he tells you that?

5 A. That is what he says.

6 Q. He even tells you that he is worried that  
7 Morgan will get mad he's told you that, right?

8 A. That's what he said.

9 Q. But he still gives you that information?

10 A. His information.

11 Q. You indicated that Ms. Kollins asked you if  
12 you had a conversation with her about smoking weed and you  
13 said yes. Ms. Kollins didn't ask you what did Morgan tell  
14 you about that? Did she admit that she was using drugs?

15 A. No, she didn't admit it.

16 Q. She did not?

17 A. No.

18 Q. Were you aware she has since admitted at that  
19 time she was using marijuana, Xanax, pills?

20 A. Since what time?

21 Q. She had since admitted that during that time  
22 that you say you asked her about drugs and she said she  
23 wasn't, she has now admitted that she was, in fact, using  
24 drugs?

25 A. She didn't admit it to me.

1 Q. Were you aware she since admitted it?

2 A. Yes.

3 Q. The information that you had that he showed up  
4 at the middle school and she was upset, that just came  
5 from Morgan, right? You weren't there at the middle  
6 school?

7 A. I wasn't there.

8 Q. The trip to Disneyland, you indicated that you  
9 got a phone call from Morgan saying Josh was sick,  
10 correct?

11 A. Correct.

12 Q. You, in fact, said that they could stay the  
13 night, right?

14 A. I didn't have a choice. I didn't say they  
15 could stay the night. She couldn't drive.

16 Q. She didn't have a license. You have a daughter  
17 and a son, correct?

18 A. Yes.

19 Q. A daughter that lives in Southern California,  
20 near Anaheim at that time?

21 A. She lives in Southern California.

22 Q. Where does your son live?

23 A. He lived in Southern California.

24 Q. Did you contact them to see if Morgan could  
25 stay there?

1           A.       I didn't think about that at the time.

2           Q.       Lastly, just a couple of last lines of  
3 questions.

4                    The photo album that you said you'd never seen.  
5 Then you said she didn't have photo albums like that of  
6 her siblings. Fair to say you've never seen that photo  
7 album before, correct?

8           A.       I had not seen that photo album.

9           Q.       So that's in her room and you'd never seen it  
10 before, there could be other photo albums you haven't  
11 seen, right?

12          A.       Yes.

13          Q.       Lastly Ms. Kollins asked you if you had a  
14 conversation with Mr. Honea about marking on his genitals  
15 and you said, no, correct?

16          A.       Correct.

17          Q.       Do you have a Koi fish tattoo on your butt?

18          A.       Do I?

19          Q.       Yes.

20          A.       Yes.

21          Q.       Do you now remember you did in fact have a  
22 conversation with Mr. Honea about strange things on your  
23 body?

24          A.       No.

25          Q.       So where do you think he got that information

1 from?

2 MS. KOLLINS: Objection, speculation.

3 THE COURT: Sustained.

4 MS. MCNEILL: Nothing further.

5 THE COURT: Ms. Kollins, redirect.

6 REDIRECT EXAMINATION

7 BY MS. KOLLINS:

8 Q. Did you ever see Morgan fight that often to  
9 that degree where she was that upset with any other  
10 friends besides Joshua?

11 A. No.

12 Q. Last question.

13 MS. KOLLINS: Permission to reopen on this one  
14 last questions.

15 THE COURT: You may.

16 BY MS. KOLLINS:

17 Q. Did you send your daughter to sex abuse  
18 counseling?

19 A. Yes.

20 Q. After all of this?

21 A. Yes.

22 MS. KOLLINS: Nothing further.

23 THE COURT: Ms. McNeill.

24 MS. MCNEILL: Briefly.

25 RECROSS-EXAMINATION

1 BY MS. MCNEILL:

2 Q. You didn't participate in that counseling,  
3 correct? You didn't go to those sessions?

4 A. They were individual sessions for her. I met  
5 with them initially.

6 Q. It's in counseling?

7 A. No.

8 Q. Are you aware that Morgan testified that she  
9 didn't talk to the counselor about sex abuse?

10 A. No.

11 MS. MCNEILL: Nothing further.

12 THE COURT: Ms. Kollins.

13 MS. KOLLINS: No.

14 THE COURT: Let me see by a show of hands if the  
15 jurors have questions for this witness. Seeing none from  
16 the jury, you are excused. Take your bag.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you. We are going to take  
19 lunch at this time.

20 MS. KOLLINS: I was going to let the court know  
21 that we had previously checked exhibits and everything  
22 that we have offered is admitted.

23 The State would rest their case in chief.

24 THE COURT: The State has no further witnesses.  
25 Thank you for clarifying this at this time. The exhibits

1 are admitted that the State proposed. And the State now  
2 rests.

3 We'll take lunch. I would like to return at 2:00.  
4 That gives us a little over an hour to have lunch and take  
5 a break.

6 JURY ADMONITION

7 During the recess, ladies and gentlemen, you are  
8 admonished not to converse among yourselves or with anyone  
9 else, including, without limitation, the lawyers, parties  
10 and witnesses, on any subject connected with this trial,  
11 or any other case referred to during it, or read, watch,  
12 or listen to any report of or commentary on the trial, or  
13 any person connected with this trial, or any such other  
14 case by any medium of information including, without  
15 limitation, newspapers, television, internet or radio.

16 You are further admonished not to form or express any  
17 opinion on any subject connected with this trial until the  
18 case is finally submitted to you.

19 See you back at 2 o'clock.

20 (Lunch recess taken.)

21 THE COURT: Counsel for State is present.

22 Mr. Honea's counsel is present. We now have the jurors  
23 present.

24 The Defense may call their first witness.

25 MR. MACARTHUR: Judge, we are going to try to

1 power through our witnesses. The first witness we're  
2 calling is Lieutenant Karen Hughes.

3 THE COURT: The record will reflect Ms. Karen  
4 Hughes will not be present to testify. She was served.

5 MR. MACARTHUR: She was.

6 THE COURT: Does the defense have an additional  
7 witness to call.

8 Paula Krasky.

9 THE COURT: Come forward and be sworn.

10 THE CLERK: You do solemnly swear the testimony  
11 you are about to give in this action shall be the truth,  
12 the whole truth, and nothing but the truth, so help you  
13 God.

14 THE WITNESS: I do.

15 THE CLERK: Be seated. State and spell your  
16 name for the record.

17 THE WITNESS: Paula Krasky, P-a-u-l-a,  
18 K-r-a-s-k-y.

19 DIRECT EXAMINATION

20 BY MS. MCNEILL:

21 Q. Good afternoon.

22 A. Hi.

23 Q. What do you do for a living?

24 A. I just recently retired.

25 Q. What did you do before you retired?



1 A. School teacher.

2 Q. In Clark County?

3 A. Correct.

4 Q. Do you know this young man sitting here?

5 A. I do.

6 Q. How do you know him?

7 A. About 11 years ago Josh was a student in my  
8 8th grade class when he was 13 years old.

9 Q. What school was that?

10 A. Johnson.

11 Q. Do you also know Joshes' mother?

12 A. I do.

13 Q. What is her name?

14 A. Dara.

15 Q. How do you know her?

16 A. I first knew her as a parent volunteer.

17 Couple years after that, Josh had a sister Lauren. I got  
18 to know her as a colleague. She started training to get a  
19 job in the district.

20 Q. You said colleague, did she eventually come to  
21 work at Johnson?

22 A. She did. She was there for awhile, if I  
23 remember correctly. But someone with seniority had the  
24 right to it before she did, I think is how it worked  
25 out.

1 Q. She wasn't a permanent employee. She worked  
2 there for a period of time?

3 A. Correct.

4 Q. Where did Dara work?

5 A. Dean's office.

6 Q. Do you remember what year that was?

7 A. When Dara was there?

8 Q. Yeah.

9 A. It -- I gauge everything when my mother got  
10 sick in 2012. It must have been within 9, 10, 11, 12, '12  
11 or '13 with the new principal.

12 Q. 2010, 2011, 2012?

13 A. I don't know the exact dates.

14 Q. Do you know Morgan Savage?

15 A. I know her basically.

16 Q. How do you know Morgan?

17 A. When I earned my master's degree in  
18 educational leadership I went through the administrative  
19 program. You have to put in service hours. So I would  
20 volunteer in the dean's office, under the tutelage of the  
21 administrator. That is where I first encountered Morgan.

22 Q. Tell us a little about how Morgan came in  
23 contact with you?

24 A. I don't have specific case by case evidence.  
25 I do recall that she and another little girlfriend formed

1 a club something like the Bitches Club. They would get in  
2 fights before or after school.

3 I don't remember if I ever addressed Morgan  
4 personally. I did her buddy, if you will, as far as  
5 dolling out disciplinary measures necessary.

6 Q. Do you remember Morgan having other  
7 disciplinary behavior issues?

8 A. Attitude wise, that's what hit me must.

9 Q. Because of those is it fair to say you would  
10 have contact with Morgan in the dean's office?

11 A. I could have very easily, yes.

12 MS. KOLLINS: Objection, speculation, could  
13 have.

14 THE COURT: Maybe we can have the witness  
15 clarify, Ms. McNeill.

16 BY MS. MCNEILL:

17 Q. She didn't recall, so I'll move on. You --  
18 did you ever see Dara having interaction with Morgan at  
19 the dean's office?

20 A. No.

21 Q. Do you know how Morgan came to become friends  
22 with the Mr. Honea?

23 A. Yes.

24 Q. How is that.

25 A. Because of being in the office a lot nor only

1 with the Honeas but other staff members, teachers, tried  
2 to render assistance which we do. That's part of our job  
3 as teachers. You build relationships with family and  
4 students and help any way we can. We have kids coming in  
5 with all kinds of issues. Some you can improve, that's  
6 the goal. That the reason I changed careers at age 46.

7 MS. KOLLINS: None responsive.

8 THE WITNESS: Sorry. Too much. I apologize.  
9 What was your question again.

10 THE COURT: Let me do this for the witness. I  
11 noticed this right out of the gate. A couple of things to  
12 keep in mind. We want to be sure the question has been  
13 finished being asked and answered and they're overlapping  
14 a little bit with that.

15 I'll sustain the objection. Ask the question again.

16 MS. MCNEILL: Thank you, your Honor.

17 BY MS. MCNEILL:

18 Q. The question was do you know how Morgan came  
19 to meet Mr. Honea?

20 A. Through contact from the dean's office.

21 Q. Were you aware of any issues going on in  
22 Morgan's home life?

23 A. Not specifically, no.

24 Q. When you say not specifically, what do you  
25 mean by that?

1           A.       My opinion when we have students coming in,  
2 especially coming out of 6th grade, they come in with  
3 issues. For someone that age to already be having issues  
4 to be in the dean's office at all can many times be a  
5 reflex of things going on in the home.

6           Sorry about that. I didn't know how else to answer  
7 it.

8           MS. KOLLINS: Objection, speculation. Lack of  
9 foundation as to Morgan having problems in her family or  
10 home. We're not talking about students in general.

11          THE COURT: I perceive the question to be  
12 answered and responsive to the question. Overruled.

13          You may proceed.

14          MS. MCNEILL: I have no more questions for  
15 her.

16          THE COURT: All right. Ms. Kollins, any  
17 questions for this witness.

18                   CROSS-EXAMINATION

19 BY MS. KOLLINS:

20          Q.       Good afternoon.

21          A.       Hi.

22          Q.       How are you.

23          A.       Good.

24          Q.       Thank you for checking with me.

25          A.       Sorry.

1 Q. You say you know that Morgan met the Honeas  
2 family through the dean's office. Is that because of  
3 something you saw or that is what someone told you?

4 A. Because they were both there.

5 Q. You don't know if they had any relationship  
6 outside of what happened?

7 A. I never heard of anything, no.

8 Q. You said you worked with Dare in 2010, 2011,  
9 2012?

10 A. I'm estimating that time range.

11 Q. She was a temporary employee for 3 years?

12 A. I said within that time. I didn't know  
13 specific dates.

14 Q. Do you know the longevity -- 3 months, 6  
15 months, a year?

16 A. I don't recall that either.

17 Q. Less than a year?

18 A. Yes.

19 Q. Was Josh in school there when she was there or  
20 no?

21 A. No -- wait a minute -- back up. When who was  
22 there.

23 Q. When Dare worked at Johnson?

24 A. No.

25 Q. Did you ever see Morgan in Joshes' company?

1 A. Side by side, walking together?

2 Q. Yes.

3 A. Yes.

4 Q. Did you ever see Morgan go to Joshes' car?

5 A. No.

6 Q. Are you aware while Morgan was at Johnson  
7 Middle School Josh was warned by the principal not to walk  
8 to his car alone with Morgan Savage?

9 A. No.

10 MS. KOLLINS: Nothing further, your Honor.  
11 Thank you.

12 THE COURT: Ms. McNeill, anything further.

13 MS. MCNEILL: No.

14 THE COURT: Let me see by a show of hands if the  
15 jurors have questions for the witness. Seeing none, you  
16 are excused.

17 THE WITNESS: Thank you. Can I sit and wait.

18 THE COURT: I'll ask you to be excused. You can  
19 wait in the anti-room. I will have a brief bench  
20 conference with counsel and get back with that.

21 THE WITNESS: Thank you.

22 THE COURT: May I have counsel at the bench.

23 (Discussion held at the bench.)

24 THE COURT: I will note for the record there is  
25 an exclusionary rule that applies and either counsel or

1 both may request that any witness not be able to be  
2 present in the courtroom when other witnesses are  
3 testifying. That rule can and does continues  
4 post-testimony to the extent there is a possibility that  
5 something could arise and require that witness to be  
6 recalled.

7 We are going decline the request to remain in the  
8 courtroom now that that testimony is complete. That is  
9 why I wanted the jurors to be aware the witness has been  
10 informed of that she may be recalled.

11 Defense's next witness.

12 MR. MACARTHUR: Defense calls Katerina Babin.

13 THE COURT: All right.

14 THE CLERK: You do solemnly swear the testimony  
15 you are about to give in this action shall be the truth,  
16 the whole truth, and nothing but the truth, so help you  
17 God.

18 THE WITNESS: I do.

19 THE CLERK: State and spell your name for the  
20 record.

21 THE WITNESS: Katerina Babin, K-a-te-r-i-n-a,  
22 B-a-b-i-n.

23 THE COURT: When you are ready.

24 MS. MCNEILL: Thank you, your Honor.

25 DIRECT EXAMINATION



1 BY MS. MCNEILL

2 Q. Hello.

3 A. Hello.

4 Q. Do you know Josh Honea?

5 A. I do.

6 Q. How do you know him?

7 A. From high school, class mates, and through  
8 high school. I considered him a best friend. Then we  
9 also went to college together.

10 Q. What year did you meet Josh?

11 A. My sophomore year.

12 Q. Can you give me like year?

13 A. Sophomore year, I was 15.

14 Q. 2009?

15 A. 2008 -- 2009.

16 Q. Going back to your relationship with Josh, you  
17 said you considered him a best friend?

18 A. Yes.

19 Q. Is it fair to say that Josh likes to give life  
20 advice?

21 MS. KOLLINS: Objection, leading.

22 THE COURT: It is Ms. McNeill.

23 I'll sustain, but rephrase.

24 BY MS. MCNEILL:

25 Q. What is Josh like as a friend?

1           A.       He's caring and he's always looking out for  
2 those he cares about.

3           Q.       How does he look out for those he cares  
4 about?

5           A.       In a way of if he knows that something isn't  
6 good for you, he's going to say what he thinks.

7           Q.       Has he done that to you?

8           A.       Yes.

9           Q.       Let me ask you this, when he does that can it  
10 be aggravating?

11          A.       Yes. But I know it comes from a good place.

12          Q.       Can you give me an example in your life he has  
13 done that?

14          A.       When I was in high school I was in sports and  
15 I liked to throw parties, and I would have parties and  
16 stuff. There would be underage drinking, and I would  
17 invite him to go, but he always voiced, no, you're not  
18 supposed to be drinking. You're under age. So he chose  
19 not to go. Just for that simple fact that he knew that it  
20 wasn't the right thing to do.

21          Q.       Did he kind of make it clear to you how he  
22 felt about that?

23          A.       Yes.

24          Q.       Did you feel like he might be being  
25 judgmental?

1           A.       No. I always felt that he had his principles  
2 and stuck to them.

3           Q.       Fair enough.

4                 You said you were friends all throughout high  
5 school?

6           A.       Yes.

7           Q.       What year was your senior year?

8           A.       I graduated in 2011 -- so between 2010 and  
9 2011.

10          Q.       What was your contact like in that time  
11 frame?

12          A.       We'd text a lot, because if I remember  
13 correctly we didn't have a class together our senior year.  
14 We kept in contact by phone and try to get into going  
15 out.

16          Q.       Did you spend a lot of time with him in that  
17 time frame?

18          A.       Yes.

19          Q.       When did you spend time with him?

20          A.       Out of school.

21          Q.       After school?

22          A.       Yeah. So whether it was football games or  
23 doing stuff out of the classroom, so that could be like I  
24 said football games. I was in sports, so a lot of my  
25 going out had to pretty much focus around school.

1 Q. You said you were also friends your freshman  
2 year of college?

3 A. Yeah.

4 Q. What year was that?

5 A. Right after we graduated. So that's 2011,  
6 2012.

7 Q. Fall of 2011, spring of 2012?

8 A. Yes, ma'am.

9 Q. Thinking during that time frame of fall 2011,  
10 2012, how often did you see Josh?

11 A. Every single day.

12 Q. I'll stop you there. I got to ask the  
13 question.

14 A. Sorry.

15 Q. You saw each other every single day. What  
16 would you be doing together?

17 A. We had a class together. He drove me to  
18 school and drove me home from school.

19 Q. When you got home from school did he say  
20 goodbye?

21 A. We'd study.

22 Q. For how long?

23 A. A couple of hours. After studying we'd go  
24 out, movies, stuff like that.

25 Q. That was for most of your freshman year?

1           A.       My whole freshman year.

2           Q.       During the time you were friends with Josh,  
3 did he have other friends in high school?

4           A.       Yes.

5           Q.       Friends his own age?

6           A.       Yes.

7           Q.       Did you ever see Josh with girls his own  
8 age?

9           A.       Yes.

10          Q.       Can you think of any examples of someone you'd  
11 see him with?

12          A.       You want names.

13          Q.       Yes.

14          A.       Cara Connor, Esmeralda -- I know those were  
15 like his two main best friends in high school.

16          Q.       Were you ever aware of him having crushes on  
17 any of these girls?

18          A.       Cara Connor.

19          Q.       I know you haven't been here. The State  
20 showed an exhibit that was text messages between you and  
21 Josh. They run a bit of a sexual nature. Is that  
22 something -- is that sort of how you communicate?

23          A.       No. To go further into that, once we got into  
24 contact after our freshman year of college, we fell out of  
25 contact once I stopped going to school. Once we got back

1 into contact we both admitted we liked each other in high  
2 school. It was more just flirty playful, but never  
3 anything more than that.

4 Q. Those sexual texts seemed funny to you?

5 A. Yes.

6 Q. Why is that?

7 A. Because that's just Josh.

8 Q. In the spring of 2015, you were friends with  
9 Josh?

10 A. Yes.

11 Q. Thinking back to around, I guess, more spring  
12 into summer of 2015, do you remember Josh talking to you a  
13 lot about girls he's dating?

14 A. Yes.

15 Q. Do you remember Josh talking to you about  
16 losing his virginity?

17 MS. KOLLINS: Objection, hearsay.

18 THE COURT: Thank you for waiting.

19 MS. MCNEILL: Approach, your Honor.

20 THE COURT: Please.

21 (Discussion held at the bench.)

22 THE COURT: The objection is sustained.

23 You may proceed with questioning.

24 BY MS. MCNEILL:

25 Q. Did you ever have -- without telling me

1 anything Josh said -- did you have conversations with Josh  
2 about woman that he was dating?

3 A. Yes.

4 Q. Were the conversations frequent?

5 A. Yes.

6 Q. Did he ever call you after he'd gone on  
7 dates?

8 A. Yes.

9 Q. During those conversations, did he ever  
10 describe those dates?

11 MS. KOLLINS: Objection, hearsay.

12 THE COURT: The form of the question was  
13 permissible. Overruled. You may answer.

14 BY MS. MCNEILL:

15 Q. After he finished a date would he call and  
16 describe the dates?

17 A. Yes.

18 Q. Would that be immediately after he had the  
19 date?

20 A. Yes.

21 Q. In those conversations he describing things  
22 that happened on those dates?

23 A. Yes.

24 Q. Did Josh tell you --

25 MS. KOLLINS: Objection, hearsay.

1 MS. MCNEILL: This point it's going to be  
2 present sense impression.

3 THE COURT: Counsel at the bench.

4 (Discussion held at the bench.)

5 THE COURT: I will overrule the last objection  
6 and allow the line of questioning to continue, with the  
7 discussion that we had at the bench. Ms. McNeill is  
8 asking appropriate styled questions to see if the  
9 foundation can be laid.

10 BY MS. MCNEILL:

11 Q. Do you know the name Briza Perez?

12 A. Yes.

13 Q. You know that name how?

14 A. Because Josh had gone on dates and that is who  
15 he lost his virginity to.

16 THE COURT: At this point we don't have any  
17 foundation laid for the appropriateness of that testimony  
18 being elicited or given. I'll direct the jurors to  
19 disregard that testimony. Please continue to see if  
20 foundation can be laid.

21 MS. MCNEILL: I tried to do it more  
22 open-ended.

23 THE COURT: Fine. Keep trying.

24 BY MS. MCNEILL:

25 Q. So Josh talked to you after going on dates



1 with Briza?

2 A. Yes.

3 Q. Do you remember about when that was, what time  
4 frame?

5 A. Yes. It was like April, May of 2015.

6 Q. When you spoke to Josh about Briza, did he  
7 seem excited about her?

8 A. Yes.

9 Q. Did you ever -- again without telling me what  
10 he said -- did you ever have a conversation about a  
11 specific incident that he was excited about?

12 A. Yes.

13 Q. When he was telling you about that, did he  
14 seem excited?

15 A. Very.

16 Q. He was excited to convey that information to  
17 you?

18 A. Yes.

19 THE COURT: I'll ask the jurors to step outside  
20 just briefly while we finalize this inquiry. You remember  
21 your admonishment to not discuss this case nor form or  
22 express any opinion on the subject. We'll bring you right  
23 back in. Stay here.

24 Can you estimate -- you have testified we've had to  
25 instruct the jurors to disregard Mr. Honea's losing his

1 virginity.

2 Can you tell me when that conversation took place  
3 compared to when you understand he actually lost his  
4 virginity.

5 THE WITNESS: The conversation we had was over  
6 the phone the night. So the same day that it happened.

7 MS. KOLLINS: Are we talking about April or May.  
8 Is that when you were talking about.

9 THE WITNESS: Me thinking back, it's two years  
10 ago. It was around that time frame, yes.

11 THE COURT: Did you want to follow up with any  
12 voir dire of this witness.

13 MS. KOLLINS: Well, I mean foundation is that he  
14 has to still be under the influence of exciting events.  
15 How long before the phone call the sexual intercourse  
16 happened.

17 THE WITNESS: Am I answering that?

18 MS. KOLLINS: The law is a crazy thing.

19 THE COURT: We are trying not to give you  
20 information. We want you to give us information. That's  
21 why it's tricky.

22 THE WITNESS: I can't tell you that he had sex  
23 at 12 and called me at 2. They went on a date. He called  
24 me after the date to tell me. We are best friends, so of  
25 course if I went on a date, vice versa. This happened.

1 So that is in the way I'm trying to explain it.

2 Is that he went out with this woman. They went out  
3 on a date. They had to good night. He goes home and  
4 calls me in the car as he's leaving, Oh, my God. This  
5 happened. But I can't tell you it was an hour before he  
6 called me.

7 THE COURT: I appreciate that.

8 THE WITNESS: No problem.

9 MS. KOLLINS: Personally, I don't think losing  
10 your virginity qualifies as an exciting event.

11 THE WITNESS: For a man.

12 THE COURT: Don't respond.

13 MS. KOLLINS: It's contemplated by the statute.  
14 I mean, I disagree that foundation has been laid. I  
15 disagree it's an exception. It's hearsay. I think it's  
16 getting their client statement in without him having to  
17 testify. That's my position and I'm not going to change  
18 it, even based on what we heard here.

19 MS. MCNEILL: He's going to testify, your  
20 Honor.

21 THE COURT: I understand. I am going to allow  
22 the testimony. We'll bring the jurors back in.

23 The discussion at the bench conference with regard to  
24 hearsay or whether there is an exception applies, the  
25 court is applying the excited utterance acceptance. It's

1 a subjective call the court is making.

2 Ms. McNeill, when you're ready.

3 BY MS. MCNEILL:

4 Q. You remember one night he called you after a  
5 date with Briza?

6 A. Yes.

7 Q. What did he tell you?

8 A. He's telling me that he had a really good date  
9 and like the whole, guess what happened. And me being,  
10 what. And he tells me that, I lost it. Oh, my God. And  
11 then of course he wants to tells me details, but I tell  
12 him to keep it to himself.

13 Q. We don't want those either.

14 A. I didn't want them either.

15 Q. You understood it to be, what, lost, being  
16 what?

17 A. His virginity.

18 Q. One last question I should have asked you  
19 When you talked about spending all of this time with Josh  
20 after school in 2011 and 2012, was Morgan Savage there  
21 when you were studying together?

22 A. Never.

23 MS. MCNEILL: Nothing further.

24 THE COURT: Ms. Kollins, any questions for this  
25 witness.

1 MS. KOLLINS: Yes ma'am.

2 Court's indulgence.

3 THE COURT: Take your time.

4 CROSS-EXAMINATION

5 BY MS. KOLLINS:

6 Q. Ms. Babin, how are you.

7 A. Good. You.

8 Q. Not bad. Thank you for asking.

9 Have you and I spoke before?

10 A. No.

11 Q. We have seen each other before at previous  
12 proceedings?

13 A. Yes.

14 Q. That would have been in September 2015?

15 A. Yes.

16 Q. And I want to go over your high school years  
17 with Josh. How old are you now?

18 A. 24.

19 Q. You graduated what year?

20 A. 2011.

21 Q. So the school year for your senior year would  
22 have been 2010 and 2011?

23 A. Yes.

24 Q. You and Josh had no classes that year?

25 A. Yes.

1 Q. What kinds of things did you do together  
2 during that year?

3 A. Go to movies, football games, bowling with  
4 friends. Anything typical high schoolers would do.

5 Q. During your senior year you had not heard the  
6 name Morgan Savage, is that your testimony?

7 A. Yes.

8 Q. Now, when this case came about you were  
9 friends with Mr. Honea, correct?

10 A. Yes.

11 Q. When the case came about you attempted to  
12 start a go-fund-me page for him?

13 A. No.

14 Q. You didn't do that?

15 A. No. I wanted to, but the go-fund-me thing for  
16 this certain thing, you are not allowed to, so I could  
17 not.

18 Q. But you attempted to?

19 A. Attempted, yes.

20 Q. Did you also make contact with Morgan  
21 Savage?

22 A. No.

23 MS. KOLLINS: May I approach the witness, your  
24 Honor.

25 THE COURT: Yes you may.

1 MS. KOLLINS: For the record, 119 is a screen  
2 shot or text message or Tweet.

3 BY MS. KOLLINS:

4 Q. Did you contact Morgan Savage in any way,  
5 shape, or form after this case was reported and  
6 investigated?

7 A. She wrote me a message, which I also have a  
8 copy of, if it's needed, over Twitter, I believe, giving  
9 me her phone number and asking me to contact her, in which  
10 case at that time I contacted Joshes' lawyers to see if I  
11 should write her back because of all that's going on.  
12 They said to make sure she's okay. So I did.

13 MS. KOLLINS: Approach.

14 THE COURT: You may.

15 BY MS. KOLLINS:

16 Q. Showing you what's marked for purposes of  
17 identification as State's 119, do you recognize that?

18 A. I recognize me, but I don't remember this.

19 Q. Would you agree with me that is your Twitter  
20 page -- hey, Morgan. My name is Katerina.

21 A. Yes.

22 Q. Is that, yes?

23 A. Yes.

24 Q. You have no reason to dispute that this  
25 information was sent over Twitter?

1           A.       No.

2                   MS. KOLLINS: State would move for admission of  
3 119. Permission to publish.

4 BY MS. KOLLINS:

5           Q.       Read that for me.

6           A.       Hi, Morgan. My name is Katerina. I think you  
7 might remember who I am. I was wondering if you could  
8 text me and give me a call.

9                   That is my phone number. I would really appreciate  
10 it. I wouldn't ask, if wasn't important.

11          Q.       And I think your testimony was that Morgan  
12 sent her information to you?

13          A.       Yes.

14          Q.       Did you discuss this investigation with Josh  
15 Honea?

16                   MS. MCNEILL: Sorry, what investigation.

17                   MS. KOLLINS: The investigation about him having  
18 sex with Morgan Savage while she's under age. Did you  
19 discuss that investigation with Josh Honea.

20                   THE WITNESS: Yes.

21 BY MS. KOLLINS:

22          Q.       Would you have done that through text  
23 messages?

24          A.       Yes.

25                   MS. KOLLINS: I am going to -- this is part of



1 State's -- sorry, your Honor -- admitted 79.

2 BY MS. KOLLINS:

3 Q. Can you see that on your screen there?

4 A. Yeah. It's kind of small but, yeah.

5 Q. If you would agree -- I'll move it for you, so  
6 I can try to get it flat out there too.

7 The red messages are from you. And the green ones  
8 are Joshes' responses.

9 The time frame goes from bottom up on the page. Do  
10 you recognize that. So in other words, the first in time  
11 message is from the bottom. Then it goes up a page.

12 Take a look at those, then we're going to read  
13 those into the record.

14 THE WITNESS: Okay.

15 THE COURT: The witness is asking to see the  
16 hard copy.

17 MS. KOLLINS: While we are doing that let me  
18 clip these back together so she doesn't get them out of  
19 order. I'll ask that you read them to yourself, then  
20 we'll have a discussion about the contents of those  
21 messages.

22 Remember they start from bottom up. It's the  
23 two pages that are tabbed.

24 THE WITNESS: Okay.

25 BY MS. KOLLINS:

1 Q. Do you remember those conversations?

2 A. Yes.

3 Q. They involve the investigation with Morgan  
4 Savage?

5 A. Yes.

6 Q. They're not just like the sexual banter you  
7 were discussing before with Mr. Honea?

8 A. No.

9 Q. So starting with this conversation. This is  
10 the end of it. It takes place on June 23rd of 2015. You  
11 agree with that?

12 A. Yes.

13 Q. And again red is you to the Defendant,  
14 correct?

15 A. Yes.

16 Q. He tells you I can't believe a 15 year old is  
17 running my life right now. Fuck that bitch. Right?

18 A. Yes.

19 Q. 14:47 -- you tell him you're an amazing,  
20 smart, caring person Josh. Don't let this make you think  
21 you are a bad person, because you are not.

22 Then you say what?

23 A. Haha, damn. Yeah. Fuck that bitch.

24 Q. You say what?

25 A. Let me find out she's lying about this.

1 Q. Josh says what to you?

2 A. I know I'm not a bad person, but bad people  
3 always seem to prevail.

4 Q. You tell Josh what?

5 A. If I ever see her, I would bitch slap her so  
6 hard.

7 Q. Josh tells you what?

8 A. You can beat her ass.

9 Q. There is more to that conversation, is that  
10 right, Katerina?

11 A. Yes.

12 Q. Then you recall having another conversation  
13 about the statute of limitations for prosecution of sex  
14 assault?

15 A. I know he brought it up, but I can't recall if  
16 there was a conversation about it.

17 Q. A text conversation about it?

18 A. Yes.

19 Q. After reading those text messages I had you  
20 review, did you not see that in there?

21 A. Like I said, I know that he brought it up,  
22 yes.

23 Q. So that was a topic of conversation?

24 A. Yes.

25 Q. That was also in the same -- well, the same

1 day maybe not the same time -- June 23rd?

2 A. Yes.

3 Q. He says to you, statute of limitations for sex  
4 crimes are ridiculous?

5 A. Yes.

6 Q. You tell him it will all get figured out. Or  
7 we'll figure it out.

8 A. Yes.

9 Q. When -- you're friends with Josh for a long  
10 time, right?

11 A. Yes.

12 Q. And -- but you say that you weren't aware of  
13 any friendship or relationship with Morgan Savage?

14 A. Yes.

15 Q. Ever?

16 A. Ever.

17 Q. Ever?

18 A. Ever.

19 Q. Did you know Josh went to Valley of Fire with  
20 Morgan?

21 A. No.

22 Q. Did you know Josh went to Disneyland with  
23 Morgan?

24 A. After, yes.

25 Q. So you did know about Morgan?

1           A.       After talking in 2015, when he told me, yes.  
2       Not at the time.

3           Q.       You know that he took her out for her 13th  
4       birthday to Mandalay Bay?

5           A.       No.

6           Q.       Did you go to Joshes' 21st birthday party?

7           A.       No. Our birthdays are two days apart, so I  
8       did something for my birthday.

9           Q.       You're really good friends but you didn't  
10       go?

11          A.       No.

12          Q.       Did you know Morgan went to his birthday  
13       party?

14          A.       Now I do.

15          Q.       Did you ever go to a Cher concert with Josh?

16          A.       No. We -- no, we didn't.

17          Q.       Did you ever go to Mt. Charleston with Josh?

18          A.       No.

19          Q.       Carlsbad, California?

20          A.       No.

21          Q.       What's funny?

22          A.       Nothing.

23          Q.       Just asking. Did I ask you about Mt.  
24       Charleston?

25          A.       Yes. No.

1 Q. Did you go to Explorer meetings with Josh?

2 A. No.

3 Q. How long was Josh an Explorer while you knew  
4 him?

5 A. His junior year, if I'm not mistaken. So high  
6 school, then he never stopped after that. That was his  
7 life.

8 Q. And you didn't, despite being best friends,  
9 you didn't participate in that part of his life?

10 A. No.

11 Q. Did you go on any family vacations with  
12 Josh?

13 A. No.

14 Q. Did you -- you went on family vacations with  
15 Josh?

16 A. No.

17 Q. Did you go to -- well, I guess I asked you  
18 about Carlsbad?

19 A. Yes.

20 Q. Do you have any photo collages of you and  
21 Josh.

22 A. Yes.

23 Q. Do you have any Christmas photos collages of  
24 you and Josh?

25 A. No.

1 Q. Do you have any pet names for Josh?

2 A. Yes.

3 Q. What is that?

4 A. Do I have to say it out loud. At school I'd  
5 call him Joshy. It's not anything other than stuff like  
6 that.

7 Q. As friends did you ever engage in any activity  
8 like what's on the screen with Josh?

9 A. No. Yes, I have.

10 Q. So you have been in a dating situation?

11 A. No.

12 Q. But you have lipped locked with Josh?

13 A. Yes.

14 Q. Have you ever created Christmas collages  
15 together with Josh and referred to each other as Baby?

16 A. Playfully the baby part. That's it.

17 Q. Not in a Christmas collage with your lips  
18 attached?

19 A. No.

20 Q. You never met Morgan Savage?

21 A. No.

22 Q. But you were willing to beat her ass?

23 A. Yes.

24 MS. KOLLINS: No more questions.

25 THE COURT: Redirect.

## 1 REDIRECT EXAMINATION

2 BY MS. MCNEILL:

3 Q. Briefly. Just a couple of areas.

4 You indicated that you sometime in September 2015,  
5 when you had the contact with Morgan you said you  
6 contacted Joshes' lawyers, right?

7 A. Yes.

8 Q. That wasn't myself or Mr. MacArthur?

9 A. No. The old ones.

10 Q. He had a different lawyer at that time?

11 A. Yes.

12 Q. Ms. Kollins went through some text messages  
13 with you, where you were talking, not so nicely about  
14 Morgan?

15 A. Yes.

16 Q. Why did you want to beat her ass?

17 A. Because Josh is my best friend and she is  
18 lying about --

19 MS. KOLLINS: Objection. Move to strike.

20 THE WITNESS: I'll change my --

21 THE COURT: The jury is instructed to disregard  
22 the witness' opinion on the subject.

23 You may continue.

24 BY MS. MCNEILL:

25 Q. Is it fair to say you didn't like Morgan?



1           A.       Yes.

2           Q.       You believed that the situation Josh was in  
3 was stressful for him?

4           A.       Yes.

5           Q.       You believe that was caused by Morgan?

6           A.       Yes.

7           MS. MCNEILL:  Nothing further.

8           THE COURT:  Ms. Kollins.

9           MS. KOLLINS:  No, thank you.

10          THE COURT:  Let me see by a show of hands if the  
11 jurors have questions for this witness.  No juror  
12 questions.  You are excused.

13          Your next witness.

14          MR. MACARTHUR:  Humberto Zarate.

15          THE COURT:  Mr. Zarate.

16          THE CLERK:  You do solemnly swear the testimony  
17 you are about to give in this action shall be the truth,  
18 the whole truth, and nothing but the truth, so help you  
19 God.

20          THE WITNESS:  I do.

21          THE CLERK:  Be seated.  State spell your name  
22 for the record.

23          THE WITNESS:  Humberto Zarate, H-u-m-b-e-r-t-o,  
24 Z-a-r-a-t-e.

25          THE CLERK:  Thank you.

1 THE COURT: Mr. MacArthur.

2 DIRECT EXAMINATION

3 BY MR. MACARTHUR:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. I apologize for your wait today. Did you have  
7 something that delayed your arrival to court today?

8 A. Someone rear-ended me.

9 Q. You're okay?

10 A. Yes.

11 Q. Your car is not messed up too bad?

12 A. No. Just a little bit.

13 Q. Mr. Zarate, are you employed?

14 A. I work for Las Vegas Metropolitan Police  
15 Department. I'm currently a police officer.

16 Q. Do you know the gentleman next to the lady?

17 A. Yes, sir.

18 Q. Who is he?

19 A. Joshua Honea.

20 Q. How long have you known him?

21 A. Like about more than 5 years.

22 Q. How would you describe your relationship to  
23 the jury?

24 A. We were Explorers together. We volunteered as  
25 patrol services representatives in Northeast Area Command

1 for Las Vegas Metropolitan Police Department, awaiting 21  
2 to apply to be a police officer.

3 Q. You're currently an officer?

4 A. Correct.

5 Q. Is today a duty day for you?

6 A. No.

7 Q. Are you friends with Josh?

8 A. Yes.

9 Q. You know the circumstances he finds himself  
10 in?

11 A. Yes.

12 Q. Did I -- or should I say, are you here as a  
13 witness called by defense?

14 A. Yes.

15 Q. Now have you spoken with me previously?

16 A. Yes.

17 Q. Would you describe for the jury when you and I  
18 have had contact?

19 A. About few weeks ago. It was -- I can't  
20 remember the exact date. You questioned me about how long  
21 I've known Josh and -- yeah.

22 Q. All right. Was that in person or by  
23 telephone?

24 A. Telephone.

25 Q. When did you meet me in person for the first

1 time?

2 A. Today.

3 Q. Do you know who Morgan Savage is?

4 A. Yes.

5 Q. If you would, please describe for the jury who  
6 is she?

7 What does that name mean to you?

8 A. It was -- Josh mentioned her like he was  
9 mentioning her like being a friend to her, helping her  
10 out. That's what I know about her.

11 Q. Had you met her before?

12 A. Once.

13 Q. Before I get into that one time you met her,  
14 in your contact with me did I tell you I need you to say  
15 anything in particular?

16 A. No.

17 Q. Did you also have contact with State's  
18 counsel?

19 A. Yes.

20 Q. Before your testimony?

21 A. Yes.

22 Q. How many times did you have contact?

23 A. Once.

24 Q. When did you meet Morgan Savage, and what were  
25 the circumstances, please?

1           A.       I believe it was 2014 -- December. It was  
2 around the time -- at the speedway, speedway had the  
3 lights.

4           Q.       If you could take us through that. What did  
5 you guys -- who was present? What did you do?

6           A.       Me, my girlfriend, Edith, Josh and Morgan.

7           Q.       Where did you meet up?

8           A.       We first met at Golden Coral at Nellis and  
9 Lamb.

10          Q.       What is Golden Coral?

11          A.       A buffet restaurant.

12          Q.       Did you do anything there?

13          A.       We ate. We had dinner.

14          Q.       And what happened next, after you had  
15 dinner?

16          A.       At which point we drove to Northeast Area  
17 Command to drop off my car drive so we'd drive the same  
18 vehicle to the light show at the speedway.

19          Q.       Did you go to the speedway?

20          A.       Yes.

21          Q.       Enjoy the lights?

22          A.       Yes.

23          Q.       Thinking about it, I want you to inform the  
24 jury whether or not there was any sort of contact between  
25 Josh and Morgan that would indicate that they were close

1 or intimate?

2 A. No. No way. We were just there as friends  
3 Had dinner. Enjoy the light show.

4 Q. Did you see them holding hands?

5 A. No.

6 Q. Kissing?

7 A. No. At no point.

8 Q. This was -- you described it as December  
9 2014?

10 A. Correct.

11 Q. Did the 4 of you get along?

12 A. Yes.

13 Q. When did you become aware that Josh had been  
14 separated from Las Vegas Metropolitan Police Department?

15 A. I can't remember the exact dated. He had  
16 given me a phone call saying that he was forced to resign.  
17 Yeah, I can't remember the exact date or time.

18 Q. What year it was?

19 A. I'll say maybe 2015.

20 Q. Did you continues to have contact with Josh  
21 after he left Metro?

22 A. Yes.

23 Q. If you could give the jury an idea of how  
24 often that would have been?

25 A. I'd say we would talk like 2, 3 times a month

1 just to see how he is doing. Yeah, I felt like stressed  
2 for him due to the fact he was forced to resign from Las  
3 Vegas Metropolitan Police Department. Hopefully not  
4 effecting him to become a police officer in the future.  
5 Yeah.

6 Q. Was there a period in which he was  
7 incarcerated?

8 A. Yes.

9 Q. Were you able to have contacted with him  
10 during that period?

11 A. No.

12 Q. So the contact you had was when we was not in  
13 custody?

14 A. Correct.

15 Q. In speaking with Josh, did he ask you to  
16 testify for him?

17 A. Did he ask me?

18 Q. Did he ever ask you to testify for him?

19 A. No.

20 Q. Did you offer to him that you wanted to  
21 testify for him?

22 A. Yeah. I told him if he needed me, I could be  
23 as honest as I can be there for him.

24 Q. Do you recall whether -- well, do you recall  
25 how you felt when you found out about the allegations that

1 have been brought against him by Morgan Savage?

2 MS. RHOADES: Objection, relevance.

3 THE COURT: Mr. MacArthur.

4 MR. MACARTHUR: Court's indulgence.

5 THE COURT: Yes.

6 MR. MACARTHUR: I'll rephrase.

7 THE COURT: All right.

8 BY MR. MACARTHUR:

9 Q. How did that make you feel?

10 MS. RHOADES: Objection, relevance.

11 THE COURT: Not sure that's within this witness'  
12 testimony. I'll sustain it.

13 BY MR. MACARTHUR:

14 Q. Can you describe what kind of person Josh was  
15 or what kind of friend he is?

16 A. He was a good friend, hard working person,  
17 dedicated to the department -- police department -- Metro.  
18 He had one set goal was to become a police officer. Very  
19 ambitious.

20 Q. Can you share anything about what he does for  
21 his friends?

22 A. He was always there for me when I needed him,  
23 like to talk to. Yeah.

24 Q. Can you think of any advice, for example?

25 A. A perfect example, obviously he would



1 volunteer more as a patrol services representative. If I  
2 asked for help for a report or anything along those lines  
3 related to the job, he would be there for me, answer my  
4 questions. He'd do the report and help me out. Yeah, he  
5 was helpful.

6 Q. All right. Moving forward. When did you  
7 happen to have contact with the State's counsel?

8 A. I can't remember. It was a few days ago.

9 Q. This week?

10 A. Yes, Tuesday -- Tuesday. It was Tuesday.

11 Q. Do you recall was it both of these ladies,  
12 either, different person?

13 A. Yes. There was a gentleman too. I forgot his  
14 name.

15 Q. Was he identified?

16 A. He mentioned his name, but I can't recall at  
17 this moment.

18 Q. Do you know what his job was?

19 A. No.

20 Q. Did he have a beard?

21 A. Yes.

22 Q. An investigator?

23 A. Possibly.

24 Q. How many people were present when you had your  
25 contact with the State?

1 A. 3 of them and me -- 4 of us.

2 Q. 4 total?

3 A. Yes.

4 Q. What did they ask you?

5 A. They asked me about Joshes' case. They asked  
6 first about me, then they asked about Josh. Questioned me  
7 about text messages.

8 Q. Okay. Did they say anything that made you  
9 feel uncomfortable?

10 A. Yes. The fact that when I was being  
11 questioned Kristina told me to be honest. And she  
12 reminded me of obstruction. I told her I am aware of  
13 that.

14 Q. Kristina being the brunette?

15 A. Yes.

16 Q. Reminded you about obstruction?

17 A. Yes.

18 Q. How did you understand that?

19 A. I was trying to be as honest as I could to  
20 like any questions I needed. Her just mentioning  
21 obstruction I felt like a threat possibly. I don't want  
22 to get in trouble or anything. I want to be honest. And  
23 me trying to answer her questions and the time frame and  
24 text messages she presented to me, telling me what  
25 conversation we had at that point, which was 2 years ago,

1 3 years. I can't remember exactly what the conversation  
2 was about at that time. At which point she said to be  
3 honest. If I'm aware of obstruction. I told her, yes, I  
4 am aware of that.

5 Q. Did you feel like she thought you weren't  
6 being honest?

7 A. I think so.

8 Q. How long did your contact with State's counsel  
9 last?

10 A. 20, 30 minutes.

11 Q. Were there any parting remarks that made you  
12 feel uncomfortable?

13 A. Sorry?

14 Q. Were there any parting remarks that made you  
15 feel uncomfortable?

16 A. Yeah. She told me good luck with defense.

17 Q. Good luck.

18 A. Because I was subpoenaed by defense.

19 Q. Good luck with defense. How did you  
20 understand that? What did that mean to you?

21 A. I believe she thought I was dishonest. I  
22 believe I understood it as that I'm on the defense side  
23 instead of me being honest.

24 Q. Are you on the defense side?

25 A. I'm not no side. That's one thing I want to

1 say before I started and you guys questioned me. I'm not  
2 on nobody's side. I'm saying the honest truth in what you  
3 remember from my mind up 2, 3 years ago. That's it.

4 Q. Now, being friends with Josh, did you confide  
5 things in each other?

6 A. Confide?

7 Q. Did you trust each other with each other's  
8 personal information?

9 A. Yes.

10 Q. Did Josh share with you anything about him  
11 being in a relationship Morgan Savage?

12 A. No.

13 Q. Did you ever see him doing anything that made  
14 you feel like there was a weird relationship between  
15 them?

16 A. No.

17 Q. Now, you said you only met Morgan that one  
18 time. Give us an idea how often you would see Josh in the  
19 heyday of your friendship?

20 A. We would see each other every -- most like  
21 Saturdays or Sundays.

22 Q. Weekends?

23 A. Weekends we work together.

24 Q. If you could, describe for the jury what year  
25 or years are these weekends mostly in?

1           A.       A little bit of 2013.  A little bit of 2014.

2                   MR. MACARTHUR:  Those are all the questions I  
3 have.  Thank you for being here.

4                   MS. MCNEILL:  Court's indulgence.

5 BY MR. MACARTHUR:

6           Q.       Sorry.  Did the two of you discuss girls and  
7 dating?

8           A.       Yes.

9           Q.       Was there ever a time in which either of you  
10 introduced each other to somebody they dated?

11          A.       Like what you mean.  Me introduce him to  
12 somebody.

13          Q.       Did he ever hook you up or you him hook up?

14          A.       I had a friend, Josie.  I gave him her phone  
15 number, but then they stopped talking to each other.

16          Q.       Did they ever go out?

17          A.       No.

18          Q.       If you could, do you know when that was you  
19 hooked him up with Josie?

20          A.       I would say somewhere in the middle of 2014,  
21 summer.

22          Q.       Summer 2014?

23          A.       From what I recall.

24                   MS. RHOADES:  Thank you.

25                   THE WITNESS:  No problem.  Thank you.

1 THE COURT: Ms. Rhoades.

2 MS. RHOADES: Approach your clerk.

3 CROSS-EXAMINATION

4 BY MS. RHOADES:

5 Q. Did you ever go on a double dates with Mr.  
6 Honea and Josie?

7 A. No.

8 Q. You never went to the Golden Coral or look at  
9 the lights?

10 A. No.

11 Q. I want to talk about this. When you say that  
12 I said, good luck with defense. Are you sure it wasn't  
13 something to the effect, like I'll see you in court when  
14 you testify?

15 A. I didn't take it like that, no.

16 Q. The conversation where all of this came up,  
17 you said me, Ms. Kollins, and an investigator were all  
18 present, right?

19 A. I believe so, yes.

20 Q. Three other people besides yourself?

21 A. Yes.

22 Q. I asked you, have you ever had a conversation  
23 with Josh about Morgan, remember that question?

24 A. Yes.

25 Q. Your answer was, no, right?

1           A.       Say that again.

2           Q.       In that meeting that you had with us, I asked  
3 you had you ever had a conversation with Josh about  
4 Morgan?

5           A.       Yes.

6           Q.       You remember that question?

7           A.       Yes.

8           Q.       You remember your answer was no?

9           A.       Correct.

10          Q.       Do you remember I asked you a question whether  
11 or not you'd ever discussed this investigation with  
12 Josh?

13          A.       Correct.

14          Q.       Remember your answer was, no, to that too?

15          A.       Yes.

16                 THE COURT:  Let counsel finish asking the  
17 question before you answer.  You are answering too quickly  
18 and she has to write everything down.  Plus, we need to  
19 make sure there is time for objection to be responded to.  
20 Okay.

21                 Go ahead.

22                 BY MS. RHOADES:

23           Q.       The answer was no to both of those questions,  
24 right?

25           A.       Yes.

1 Q. Then after that I showed you a text message  
2 that I had between you and Mr. Honea, right?

3 A. Yes.

4 Q. After I showed you that you squirrel around in  
5 your chair and said you didn't remember?

6 MS. KOLLINS: Objection to the  
7 characterization.

8 MS. RHOADES: They talked about what was said  
9 and what was going on.

10 THE COURT: Ask the question.

11 BY MS. RHOADES:

12 Q. After I showed you that text you got  
13 squirrely in your chair and said I don't remember  
14 anything about that. Do you remember that's what you  
15 said?

16 A. Yes.

17 MR. MACARTHUR: Objection, argumentative. The  
18 question doesn't have to be squirrely.

19 THE COURT: Overruled.

20 MS. RHOADES: May I approach.

21 THE COURT: You may.

22 BY MS. RHOADES:

23 Q. Showing you State's 120. Take a look at that  
24 and look up at me when you are done?

25 Recognize those?



1 A. Yes.

2 Q. Are those the text messages we're talking  
3 about when you came in and met with us?

4 A. Yes.

5 Q. You couldn't remember?

6 A. Yes.

7 Q. MS. RHOADES: I move for admission of State's  
8 120, your Honor?

9 THE COURT: Any objection the 120.

10 MR. MACARTHUR: No.

11 THE COURT: State's 120 is admitted. You may  
12 publish.

13 MS. RHOADES: Thank you.

14 BY MS. RHOADES:

15 Q. I just want to read these into the record.  
16 This is the first text message on here from you on June  
17 22nd, 2015. That's your name, right?

18 A. Yes.

19 Q. You tell Josh, dude, I'm stressed for you.  
20 Right?

21 A. Yes.

22 Q. You saw this in our meeting we had right?

23 A. Yes.

24 Q. You just testified on direct examination you  
25 were stressed for Josh?

1 A. Yes.

2 Q. So this is all the same time 13:48:41 and  
3 13:48:57. Josh says, me too. Haha?

4 Then you pretty much immediately -- I'm sorry.  
5 That's about 20 minutes, 30 minutes -- you respond LOL.

6 Then right after you respond, LOL, 15 seconds later  
7 you say, so what did Morgan say. That IA called her  
8 yesterday?

9 That's your text message to him, right?

10 A. Yes.

11 Q. So in that you were discussing both Morgan,  
12 correct?

13 A. Yes.

14 Q. And you were also discussing the  
15 investigation, correct?

16 A. Yes.

17 Q. After I showed you these text messages, I said  
18 we need you to be honest with us, right?

19 A. Correct.

20 Q. You still stuck to the story you didn't  
21 remember having this conversation?

22 A. I don't remember the conversation exactly,  
23 that conversation. It was 2 years, 3 years ago. Of  
24 course, I said those text messages, but I don't remember  
25 the exact conversation specifically what to say.

1 Q. I don't want you to say anything. Do you  
2 generally remember what you said?

3 A. Generally, I don't.

4 Q. So you don't remember?

5 A. For that phone call and for me to say, hey,  
6 call me. I don't remember that conversation, like through  
7 the phone.

8 Q. Thank you for taking us there. That's Josh  
9 who tells you, call me, we can discuss, right?

10 A. Yeah.

11 Q. So after you had the text conversation he  
12 tells you to call him, and you call him, right?

13 A. I don't remember if I called him. I can't  
14 remember June 22nd.

15 Q. Okay. When you went to Golden Coral with  
16 Morgan and Josh were you aware that she was 15 years  
17 old?

18 A. No.

19 Q. Josh was 21?

20 A. Josh was 21, yes. We're the same age.

21 Q. How old are you now?

22 A. 24.

23 Q. Edith was with you, right?

24 A. Correct.

25 Q. How old is Edith?

1 A. 23.

2 Q. How often do you talk to Josh now?

3 A. Once a month.

4 Q. I want to be clear before you look at these  
5 texts. You told myself and Ms. Kollins and the  
6 investigator that you've never had any conversation with  
7 Josh about Morgan, right?

8 A. Correct.

9 Q. Also in that meeting before we looked at these  
10 texts you told us you never discussed the investigation  
11 with Morgan with Josh?

12 A. I wouldn't talk to Morgan.

13 Q. Regarding, Morgan. I apologize for the  
14 confusion.

15 You remember -- we'll we go back in that meeting.  
16 Okay. That you also told us, all 3 of us, that you never  
17 discussed this investigation regarding Morgan with Josh?

18 A. Correct.

19 MS. RHOADES: I will pass the witness, your  
20 Honor.

21 THE COURT: Mr. MacArthur, any redirect.

22 REDIRECT EXAMINATION

23 BY MR. MACARTHUR:

24 Q. Mr. Zarate, did you -- when I first contacted  
25 you, did you initially want to testify?

1           A.       You guys needed me, yes.

2           Q.       I appreciate that. Did you have misgivings  
3 about it?

4           A.       Misgivings is?

5           Q.       Is testifying in response to a defense  
6 subpoena potentially problematic for you?

7           A.       I don't know.

8           Q.       Does it put you in any bad situation?

9           MS. RHOADES: Objection, leading, your Honor.

10          THE COURT: Overruled.

11          THE WITNESS:

12          BY MR. MACARTHUR:

13          Q.       Does my question make sense?

14          A.       If it -- rephrase the question.

15          Q.       Is there anything about having to come here  
16 and testify that makes you nerves?

17          A.       A little bit, yes.

18          Q.       If you would share with the jury why does that  
19 put you in a position to be nervous?

20          A.       The fact that I'm a police officer for Las  
21 Vegas Metropolitan Police Department. I just don't want  
22 to be trouble for anything for showing up here on a case  
23 or anything happening to me regarding my job.

24          Q.       Did you feel like Kristina was reminding you  
25 of that during your conversation with her when you were

1 talking to her?

2 A. Yeah. Like I said, I mention about  
3 obstruction. I don't know what could be done like for her  
4 to do to me or something, because she believes I'm being  
5 dishonest.

6 Q. Did you share that with me earlier this  
7 week?

8 A. Yes.

9 Q. Have you had to testify in court before?

10 A. No.

11 Q. How long have you been an officer for Metro?

12 A. 2 years.

13 Q. You haven't had to come in and testify?

14 A. Correct.

15 Q. Do you know other officers that have  
16 testified?

17 A. I believe so, yes.

18 Q. Is it usually the case that officers are  
19 testifying for the State as oppose to against the State?

20 A. I have no idea.

21 Q. Fair enough. Would you put your career in  
22 jeopardy to come here and help Josh?

23 A. No.

24 Q. Were you honest with the State as much as you  
25 could be when you talked to them?

1 A. Yes.

2 Q. Did I share with you any text messages or  
3 information before you went and talked with them?

4 A. No.

5 Q. Did they share text messages before they  
6 questioned you?

7 A. Yes. She showed the one she put up.

8 Q. Did they give you that sheet before they  
9 questioned you?

10 A. No.

11 Q. So my question was, did they show you that  
12 they had text messages before they questioned you?

13 A. It was during.

14 Q. You found out about those from them?

15 A. Correct.

16 Q. You don't deny that you were friends with  
17 Josh?

18 A. No.

19 Q. You don't deny you had text message  
20 conversations?

21 A. Correct.

22 Q. I believe your testimony was it had been a  
23 couple of years and you didn't specifically remember  
24 those?

25 A. Correct.

1 Q. Is everything you said here true today?

2 A. Yes.

3 MR. MACARTHUR: Thank you, sir.

4 THE COURT: Ms. Rhoades, anything further.

5 MS. RHOADES: Yes.

6 RE-CROSS-EXAMINATION

7 BY MS. RHOADES:

8 Q. Sir, I didn't make threats to you I was going  
9 to report you for obstruction, did I?

10 A. No. I didn't say you threatened me. That's  
11 how I felt when you mentioned it.

12 Q. In that same conversation, that same sentence  
13 I said we want you to be honest. You can't obstruct  
14 justice?

15 A. Correct. But the way your manner was that is  
16 how I took it. That was my -- from my eyes, that's how I  
17 took it.

18 Q. You're fully aware that you can't get in  
19 trouble for honoring a valid subpoena, right?

20 A. No.

21 Q. The only way to get in trouble is if you  
22 lie?

23 A. Correct.

24 MS. RHOADES: Nothing further, your Honor.

25 THE COURT: MacArthur.



1 MR. MACARTHUR: No follow up.

2 THE COURT: Let me see by a show of hands if the  
3 jurors have questions for the witness. Seeing none, you  
4 are excused. Thank you very much.

5 MR. MACARTHUR: Defense calls Tobbi Cappron,  
6 Tobbi Cappron.

7 THE CLERK: You do solemnly swear the testimony  
8 you are about to give in this action, shall be the truth,  
9 the whole truth, and nothing but the truth, so help you  
10 God.

11 THE WITNESS: I do.

12 THE CLERK: Be seated. State and spell your  
13 name for the record.

14 THE WITNESS: Tobbi Cappron, T-o-b-b-i,  
15 C-a-p-p-r-o-n.

16 DIRECT EXAMINATION

17 BY MR. MACARTHUR:

18 Q. Good afternoon. How are you?

19 A. Good.

20 Q. Thank you being here.

21 How are you employed?

22 A. Indigent defense.

23 Q. I guess my question is what function do you  
24 perform for us?

25 A. I'm an investigator.

1 Q. As an investigator what are some of your  
2 typical functions?

3 A. Subpoena witnesses, interview people, gather  
4 evidence, et cetera.

5 Q. Did we task you with you any of those kind of  
6 objectives as far as Josh Honea?

7 A. Yes.

8 Q. Did that include serving subpoenas?

9 A. Yes.

10 Q. Did that include contacting witnesses?

11 A. Yes.

12 Q. Let's talk about subpoenas first. Did you  
13 have occasion to attempt to serve a subpoena on an  
14 individual known as Lieutenant Karen Hughes?

15 A. Yes.

16 Q. Were you able to effectuate service?

17 A. Yes, via drop service.

18 Q. If you could, take us through that. How did  
19 you go about attempting to serve her?

20 A. I went out to her house and located at Donald  
21 Nelson (ph).

22 Q. If I might, how did you establish that that  
23 was her house?

24 A. County assessor's office.

25 Q. So there was a property she owned?

1 A. Correct.

2 Q. Approximately where in Las Vegas was that  
3 generally speaking?

4 A. Jones and Torrey Pines area.

5 Q. When you arrived there what did you see?

6 A. The first time I went out there was a vehicle  
7 in the driveway. Kind of quiet. Knocked on the door.

8 Q. What kind of vehicle?

9 A. A blue Ford pickup.

10 Q. Is that a passenger vehicle or truck?

11 A. Truck.

12 Q. What did you do next?

13 A. Knocked on the door. Heard about 3 to 5 dogs  
14 in the house. Then I went back later that afternoon and  
15 nobody answered. I went back that evening.

16 Q. So nobody answered the first time?

17 A. Correct.

18 Q. What time was that?

19 A. First time was around 11:30.

20 Q. Day or night?

21 A. Daytime.

22 Q. Do you know what date this was -- I don't know  
23 if you testified to that already?

24 A. November 18th.

25 Q. You said you went back later in the --

1           A.       Evening that night around 5:30.

2           Q.       Explain to the jury what happened when you  
3 went to attempt service?

4           A.       I went to the house. The blue pickup was  
5 still there. I went to the door and knocked. I heard the  
6 3 to 5 dogs barking. At that time I heard somebody inside  
7 opening a gate. The dogs couldn't make it to the front  
8 door. There is glass panes. So I heard somebody playing  
9 with like a gate or something inside.

10           At that point they refused to come to the door, so  
11 I did what the call a drop service. Basically saying you  
12 are served, here it is.

13           Q.       That being a valid form of service?

14           A.       Yes.

15           Q.       Did you continue to try to contact her in  
16 different ways?

17           A.       Yeah. I tried locating her in other ways.  
18 And later I was led to believe she is out of the  
19 country.

20           MS. KOLLINS: Objection, based on hearsay  
21 information.

22           THE COURT: Sustained.

23           MR. MACARTHUR: If I might, Judge, lay  
24 foundation.

25           BY MR. MACARTHUR:

1 Q. At some point did you cease to try to contact  
2 her?

3 A. Yes.

4 Q. Why is that?

5 A. I was led to believe she is out of the  
6 country.

7 MS. KOLLINS: Objection.

8 THE COURT: The jury is ordered to disregard the  
9 hearsay statement.

10 MR. MACARTHUR: It's not for the truth of the  
11 matter. It's reflecting why she stopped looking for her,  
12 Lieutenant Karen Hughes.

13 THE COURT: Counsel at the bench.

14 (Discussion held at the bench.)

15 THE COURT: Objection sustained.

16 BY MR. MACARTHUR:

17 Q. Ms. Cappron, did you have occasion to attempt  
18 to contact a witness by the name of Ashley Gruter (ph)?

19 A. Yes.

20 Q. If you would, explain to jury who is Ashley  
21 Gruter?

22 A. She is the Morgan's cousin.

23 Q. Where does she live?

24 A. Minnesota.

25 Q. Were you able to contact her?

1 A. Yes.

2 Q. How were you able to do that?

3 A. By phone.

4 Q. You had a phone conversation with her?

5 A. Yes.

6 Q. Without telling the jury what she said, did  
7 you learn information from her that you felt was  
8 important?

9 A. Yes.

10 Q. What did you do with that information?

11 A. Relayed it to you.

12 Q. In addition to that, did you provide us with  
13 anything else?

14 A. Her phone number, Ashley's number.

15 Q. Why did you feel it was so important?

16 A. Because she had relayed --

17 MS. KOLLINS: Objection, hearsay.

18 MR. MACARTHUR: Affect on the listener.

19 MR. MACARTHUR: Help me understand. You keep  
20 getting an exercise, but it is the best we have. Let's  
21 have this conversation here, come up here.

22 (Discussion held at the bench.)

23 THE COURT: Objection sustained.

24 BY MR. MACARTHUR:

25 Q. Ms. Cappron, based -- without saying what

1 Ashley Gruter told you -- did you have concerns about what  
2 Morgan's testimony might be at trial?

3 MS. KOLLINS: Objection, relevance.

4 THE COURT: Overruled.

5 BY MR. MACARTHUR:

6 Q. When did you speak with Ashley Gruter? When  
7 that was?

8 A. I believe it was around November 4th and  
9 5th.

10 Q. This trial started the 27th, same month?

11 A. Yes.

12 Q. Without saying what she said, did your  
13 conversation with Ashley Gruter lead you to have concerns  
14 about what Morgan Savage's testimony might be in this  
15 trial?

16 A. Yes.

17 MS. KOLLINS: Same objection.

18 THE COURT: Overruled.

19 BY MR. MACARTHUR:

20 Q. Did you convey that to us?

21 A. Yes.

22 Q. Along with Ashley's phone number?

23 A. Yes.

24 Q. Did you have further contact with Ashley?

25 A. No.

1 Q. Did you individually have contact with  
2 Morgan?

3 A. No.

4 MR. MACARTHUR: No further questions.

5 THE COURT: Ms. Kollins.

6 CROSS-EXAMINATION

7 BY MS. KOLLINS:

8 Q. Ms. Cappron, are you being compensated by an  
9 ex parte order signed by the court for the case?

10 A. No.

11 Q. I don't know Mr. MacArthur misspoke or if it  
12 was the question, but just to clarify. He said you had no  
13 more contact with Morgan Savage. Have you ever had  
14 contact with Morgan Savage?

15 A. No.

16 THE COURT: I tried to clarify which it was in  
17 the conversation we're having.

18 BY MS. KOLLINS:

19 Q. You obtained a statement from Ashley on  
20 November 4th and November 5th?

21 A. I had a conversation with her.

22 Q. You obtained a statement or had a  
23 conversation? Did you draft a report in that regard?

24 A. No.

25 Q. You relayed all of that information to



1 Mr. MacArthur?

2 A. Just what I felt was relevant.

3 Q. Did you review Ashley Gruter's voluntary  
4 statement before you spoke to her?

5 A. Yes, briefly.

6 Q. The person that was inside Karen Hughes' house  
7 you never saw if it was a grown up male or female?

8 A. Correct.

9 Q. I did not identify that person as Karen  
10 Hughes?

11 A. Correct.

12 MS. KOLLINS: Nothing further, your Honor.

13 THE COURT: Mr. MacArthur.

14 REDIRECT EXAMINATION

15 BY MR. MACARTHUR:

16 Q. Ms. Cappron, without stating specifically what  
17 Ashley Gruter said, could you derive from her attitude or  
18 word choice whether she felt possibly --

19 MS. KOLLINS: Objection, hearsay. Relevance.

20 MR. MACARTHUR: I didn't ask for hearsay. I  
21 asked for her sense of the other person's attitude.

22 MS. KOLLINS: Based on a hearsay response.

23 THE COURT: I believe there is also a foundation  
24 issue. There have been a number of questions raised how  
25 someone would know response.

1 BY MR. MACARTHUR:

2 Q. You have had conversations with people  
3 before?

4 A. Yes.

5 Q. You have -- how old are you?

6 A. 48.

7 Q. I apologize. Didn't mean to do that to you?

8 A. I think.

9 Q. Have you had an opportunity to see when they  
10 are happy?

11 A. Yes.

12 Q. Excited?

13 A. Yep.

14 Q. Angry?

15 A. Yes.

16 Q. Sad?

17 A. Yes.

18 Q. When they like somebody?

19 A. Yes.

20 Q. When they don't like somebody?

21 A. Yes.

22 Q. How many interviews have you conducted as an  
23 investigator?

24 A. Thousands.

25 Q. If you could keep your voice up?

1 A. Thousands.

2 Q. Did you receive training in how to conduct  
3 witness interviews?

4 A. Yes.

5 Q. Did that training include reading body  
6 language or verbal cues?

7 A. Yes.

8 Q. In your experience as an investigator also as  
9 an adult human being, were you able to arrive at a sense  
10 of what kind of attitude Ashley Gruter had toward her  
11 cousin Morgan Savage?

12 MS. KOLLINS: Objection, based on hearsay.

13 THE COURT: It does appear that we're asking  
14 this witness to comment on either comments made out of  
15 court or non-verbal comments made out of court that could  
16 amount to testimony. Do you want to respond.

17 MR. MACARTHUR: Because I'm not asking for a  
18 statement I think that it is not only relevant but  
19 appropriate if you can describe what's apparent to her.

20 THE COURT: Further foundation on what basis she  
21 is going to -- if she's allowed -- to state this  
22 opinion.

23 BY MR. MACARTHUR:

24 Q. During your phone conversation with Ashley  
25 Gruter the subject matter was Morgan; is that correct?

1 A. Yes.

2 Q. She shared with you information regarding her  
3 contact with Morgan?

4 A. Yes.

5 Q. Fair to say that -- withdrawn.

6 Based on her description of her contact with  
7 Morgan, were you able to characterize them as positive or  
8 negative?

9 MS. KOLLINS: Objection, hearsay. Improper  
10 opinion. Improper characterization.

11 THE COURT: Sustained.

12 BY MR. MACARTHUR:

13 Q. What was the date you spoke with Morgan?

14 A. 3rd or 4th of November.

15 Q. How long did it take you to get that  
16 information to us?

17 A. The follow day of the conversation.

18 Q. If you recall, do you remember when the  
19 defense team become aware of where Morgan Savage was?

20 MS. KOLLINS: What was the question. Sorry.

21 MR. MACARTHUR: If you recall, do you remember  
22 when the defense team become aware of where Morgan Savage  
23 was.

24 THE WITNESS: Couple of days before trial.

25 BY MR. MACARTHUR:

1 Q. Do you recall where she was?

2 A. She was staying in an alley.

3 Q. Okay. Approximately where was the alley  
4 located?

5 A. I can't remember the street right off the top  
6 of my head. I was working on a murder trial too.

7 Q. Was anybody from the defense able to locate  
8 her in this alley?

9 A. I don't know if they located her. They  
10 located her father, if I remember correctly.

11 Q. Did there come a time after that which we  
12 become aware of where Morgan was specifically?

13 A. Yes.

14 Q. When was that?

15 A. Calendar call the 27th.

16 Q. The 27th is the first day of trial?

17 A. A week before.

18 Q. Where was she?

19 A. Detention Center.

20 Q. Okay. Were?

21 THE COURT: For the record, Mr. MacArthur, I'm  
22 not sure whether this is material or not, but there were  
23 some -- the typical scenario would be calendar call would  
24 be one week prior to trial. I'm not sure that that  
25 occurred in this case. We can take judicial notice and

1 determine that, but I don't know that we can be sure that  
2 is the date.

3 THE WITNESS: I think it was the Thursday  
4 before.

5 MR. MACARTHUR: If it pleases the court to take  
6 judicial notice of when the trial started.

7 THE COURT: Fine.

8 BY MR. MACARTHUR:

9 Q. Did you become aware of a material witness  
10 warrant that had been issued by the State for her  
11 arrest?

12 A. Yes. On the 20th.

13 Q. Did you provide that information to anyone?

14 A. To you.

15 Q. Do you recall if she was arrested on that  
16 warrant?

17 A. She was.

18 Q. Did you convey that information to anyone?

19 A. I might have to you.

20 Q. Were you available to go to the jail on the --  
21 assuming the Judge takes judicial notice that the trial  
22 started on the 27th, Monday -- were you available to  
23 accompany Defense counsel to the jail on the eve of  
24 Tuesday after trial started in order to interview Morgan?

25 A. I was not available at that time, yes.

1 Q. Are you aware we contacted her?

2 A. My understanding, yes.

3 Q. All right.

4 MR. MACARTHUR: No further questions.

5 THE COURT: All right.

6 RECROSS-EXAMINATION

7 BY MS. KOLLINS:

8 Q. You are aware, ma'am, that material witness  
9 warrants are issued by courts not by the State of Nevada,  
10 correct?

11 A. Correct. You apply for it. They're issued  
12 through the court.

13 Q. They're reviewed and approved and issued by  
14 the court?

15 A. Correct.

16 MS. KOLLINS: Thank you. Nothing further.

17 THE COURT: Let me see by a show of hands if  
18 they have questions for this witness. Seeing no hands,  
19 you are excused. Thank you. Don't forget your  
20 belongings. We'll take a brief recess.

21 JURY ADMONITION

22 During the recess, ladies and gentlemen, you are  
23 admonished not to converse among yourselves or with anyone  
24 else, including, without limitation, the lawyers, parties  
25 and witnesses, on any subject connected with this trial,

1 or any other case referred to during it, or read, watch,  
2 or listen to any report of or commentary on the trial, or  
3 any person connected with this trial, or any such other  
4 case by any medium of information including, without  
5 limitation, newspapers, television, internet or radio.

6 You are further admonished not to form or express any  
7 opinion on any subject connected with this trial until the  
8 case is finally submitted to you.

9 See you back at 4 o'clock.

10 (Brief recess taken.)

11 THE COURT: Your next witness.

12 MR. MACARTHUR: Dara Coleman.

13 THE COURT: Come forward. My clerk will swear  
14 you in.

15 THE CLERK: You do solemnly swear the testimony  
16 you are about to give in this action shall be the truth,  
17 the whole truth, and nothing but the truth so help you  
18 God.

19 THE WITNESS: I do.

20 THE CLERK: Be seated. State and spell your  
21 name for the record.

22 THE WITNESS: Dara Coleman, D-a-r-a,  
23 C-o-l-e-m-a-n.

24 DIRECT EXAMINATION

25 BY MS. MCNEILL:



1 Q. Good afternoon. Thank you for waiting.

2 How do you know Josh?

3 A. He is my son.

4 Q. Did you ever work at Johnson Middle School?

5 A. Yes.

6 Q. When did you work there?

7 A. I want to say roughly 2010. I started off  
8 doing temping then subbing.

9 Q. And how long did you work at Johnson?

10 A. I actually learned my stuff there. I was a  
11 stay home mom. I learned different fields there,  
12 different areas. Then I started doing subbing for special  
13 ed. Then I went to the dean's office. That is where I  
14 did my temp work for about maybe 4 months, 5 months.

15 Q. I want to talk to a little about that time you  
16 worked in the dean's office?

17 A. Yes.

18 Q. Do you know Morgan Savage?

19 A. Yes.

20 Q. How do you know her?

21 A. She was in the dean's office.

22 Q. Is that where you met Morgan?

23 A. Yes.

24 Q. Do you know what year that was?

25 A. I want to say it was 2010.

1 Q. Do you remember what grade Morgan was in?

2 A. 6th grade.

3 Q. What was Morgan doing in the dean's office?

4 A. She would get in trouble. She would come in  
5 complaining about certain things.

6 Q. What was your interaction with her at that  
7 time?

8 A. I tried to talk with her. See what was wrong.  
9 That is basically what we do in the dean's office, find  
10 out what is going on before I sent them to the dean.

11 Q. Did you -- were there a lot of interactions  
12 you had with Morgan at the dean's office?

13 A. Yes.

14 Q. Were they all because she was in trouble?

15 A. She always walked out of class or wouldn't go  
16 to class. She would never have a pass on her from her  
17 teacher. She would complain about other students.

18 Q. Were the people in the dean's office starting  
19 to be concerned about Morgan?

20 A. Yes.

21 Q. What was the cause of that concern?

22 A. Certain things that she was doing, certain  
23 things she was saying.

24 Q. What did the people in the dean's office  
25 decide to do about that?

1           A.       I was the secretary, so the dean, he would  
2 conference her. Sometimes she was RPC'd in house.

3           Q.       Did the dean -- did anyone make contact, if  
4 you know, with Pamela Savage?

5           A.       I know I did. I don't know if the dean did.  
6 I know I did.

7           Q.       Who is Pam Savage?

8           A.       Pam is Morgan's mom.

9           Q.       What was your contact and the purpose of your  
10 contact with Ms. Savage at that time?

11          A.       I called her and told her she needed to call  
12 the counselor's office to make a parent conference with  
13 the teacher.

14          Q.       If you know, did Pam do that?

15          A.       Not that I know of.

16          Q.       Did there come a time when -- well, let me ask  
17 you this. Did Josh also spend time at Johnson Middle  
18 School in that time period?

19          A.       Yes, he did. He did community service. Then  
20 he enjoyed it and they liked him there so he continued  
21 there.

22          Q.       What kind of things did Josh do?

23          A.       He worked out of the dean's office underneath  
24 the dean.

25          Q.       What were his job functions?

1           A.       I was inside, so I don't know exactly  
2 everything that he did, but he would stop if there was  
3 fighting. He would go see who was fighting, who would go  
4 on the call as well as campus monitor and the dean. He  
5 would go outside to the buses and make sure kids get on  
6 the bus okay.

7           Q.       Did there come a time when your family decided  
8 to bring Morgan into your lives?

9           A.       Yes.

10          Q.       Why did you do that? I guess when was that,  
11 do you remember?

12          A.       I want to say it was the same year while she  
13 was in 6th grade.

14          Q.       How did you guys -- why did you decide to do  
15 that?

16          A.       She was a troubled kid.

17          Q.       What kinds of things did you start doing, you  
18 yourself or your family for Morgan?

19          A.       I talked to her a lot, which I with other  
20 students. I just got -- she would always come in and see  
21 me. After awhile she didn't want to see the dean she only  
22 talked to me. She would talk to me about different  
23 things.

24          Q.       Did she start spending time with your  
25 family?

1           A.       Uh-huh.

2           Q.       What kinds of things did she do with the  
3 family?

4           A.       She would come over.  There wasn't -- she  
5 didn't have a cook and her mom was out, and I would feed  
6 her.

7           Q.       So she'd come over to eat dinner?

8           A.       Uh-huh.

9           THE COURT:  Is that, yes.

10          MR. MACARTHUR:  Answer out loud.

11          BY MS. MCNEILL:

12          Q.       You mentioned she couldn't cook.  Is there  
13 something about Morgan being at home that caused you  
14 concern?

15          A.       Yeah.  There wasn't food.  Her mom wasn't home.  
16 There wasn't food in the house that she was able to cook.  
17 She didn't know how to cook.

18          MS. RHOADES:  Your Honor, I would ask for  
19 foundation how she knew she couldn't cook, what she is  
20 talking about.

21          MS. MCNEILL:  We are talking about 6th grade  
22 here.

23          THE COURT:  That's a fair objection.

24          MS. RHOADES:  Just foundation how does she know  
25 there is no food at the house.  Did she see that.

1 MS. MCNEILL: Sure.

2 BY MS. MCNEILL:

3 Q. We are talking about 6th grade year and you  
4 had concerns?

5 A. Yes.

6 Q. Were those concerns about things that were  
7 going on in Morgan's home?

8 A. Yes. Especially one weekend.

9 Q. We'll get there. The concerns you had where  
10 did that information come from that made you concerned?

11 A. It came from her.

12 Q. From her being who?

13 A. Morgan.

14 Q. So based on things that Morgan told you, did  
15 you feel you had to invite her to your house to eat?

16 A. Yes.

17 Q. Were there a time when Morgan had to spend the  
18 night at your house?

19 A. Yes.

20 Q. Do you remember what year that was -- 6th  
21 grade year, 7th grade year?

22 A. Um, it was 6th -- I'm not sure, but it was one  
23 of those two. I want to say -- I want to lean more  
24 towards the 6th grade.

25 Q. Did -- why did Morgan have to spend the night

1 at your house?

2 A. Her air-conditioning in their condo broke  
3 down. It was the middle of August. It was very hot. She  
4 had two dogs there as well with her.

5 Q. Who informed you there was no air-conditioning  
6 in the house?

7 A. She did, Morgan.

8 Q. Was Morgan alone in her house?

9 A. Yes.

10 Q. Did you go to the house based on that phone  
11 call from Morgan?

12 A. Yes.

13 Q. Where was Morgan's mother?

14 A. She was at work Friday and Friday night she  
15 was catching a plane to Arizona to see her boyfriend.  
16 Coming home Sunday night.

17 Q. Do you know what day of the week you went over  
18 there to help Morgan?

19 A. It was on the Friday, because she tried to  
20 call her and she wouldn't come home.

21 Q. She tried to call her -- Morgan --

22 A. Morgan tried to call her mom and her mom  
23 wouldn't come home.

24 Q. Based on the fact it's August and no  
25 air-conditioning is that why you had Morgan come to your

1 house?

2 A. Yes.

3 Q. Because -- well, what time do you remember

4 Morgan spending time with you?

5 A. Spending time with our family.

6 Q. Generally.

7 A. Come over. We watch movie. A lot of time she

8 would want to listen to the scanner.

9 Q. What time period, if you remember the years?

10 A. In her gosh 8th grade, 9th grade.

11 Q. So from 6th grade until 9th grade you remember

12 that?

13 A. Yes.

14 Q. She'd spend quite a bit of time in your

15 home?

16 A. Right.

17 Q. Was Josh there during those times?

18 A. Not all the time.

19 Q. When you saw Morgan and Josh together did

20 anything seem suspicious about that?

21 A. No.

22 Q. How did Josh treat Morgan?

23 A. Like he treats his sister.

24 Q. Josh has a sibling?

25 A. Yes.



1 Q. What is her name?

2 A. Lauren.

3 Q. So you saw Josh interact with Morgan like he  
4 would with Lauren?

5 A. Yes.

6 Q. Did Morgan spend time with Lauren?

7 A. Lauren took her home or took her to Johnson.  
8 She was doing community service at that time, then going  
9 to high school.

10 Q. Lauren was going to high school?

11 A. Morgan was going to high school and Lauren  
12 went to college and picked her up after community  
13 service.

14 Q. She sometimes gave Morgan rides?

15 A. Yes.

16 Q. I'm going to show you some pictures. Showing  
17 you State's Exhibit 83. Have you seen any of those photos  
18 before?

19 A. Yes.

20 Q. Looking at these activities, are you surprised  
21 to not see Josh is in these photos?

22 A. No.

23 Q. Why is that?

24 A. He takes the picture.

25 Q. I'll show you what's been marked as Defense

1 Proposed Exhibit EE. If I may, approach the witness?

2 THE COURT: You may.

3 BY MS. MCNEILL:

4 Q. Do you recognize that photo?

5 A. Yes.

6 Q. Did you take that photo?

7 A. Yes.

8 Q. Does it fairly and accurately represent Josh  
9 and the girls with him?

10 A. Yes.

11 Q. Do you know when those were taken?

12 A. No.

13 MS. MCNEILL: If I may admit EE.

14 MS. RHOADES: When was -- at what time was it  
15 taken and where was it taken.

16 THE WITNESS: I'm not hundred percent sure. I  
17 want to say it could have been -- I'm not sure. I  
18 couldn't say if I'm not hundred percent sure.

19 BY MS. MCNEILL:

20 Q. It was taken in a time period Morgan was part  
21 of your lives?

22 A. Yes.

23 Q. Okay.

24 MS. MCNEILL: Again, move for admission.

25 MS. RHOADES: Time period of what.

1 MS. MCNEILL: When Morgan was in their lives.

2 MS. RHOADES: That is not proper foundation  
3 laid.

4 THE COURT: I'm going to admit Defendant's EE.  
5 You may publish.

6 BY MS. MCNEILL:

7 Q. Ms. Coleman, you said you took this picture?

8 A. Yes.

9 Q. And you remember what the occasion was?

10 A. I want to say it was -- they did go out. I'm  
11 trying to think because he has gone to Cher with a couple  
12 of these girls. I'm not sure. I want to say they had prom  
13 night and he doesn't go to prom, but he did go out with  
14 his friends.

15 Q. Fair to say this is a photo of Josh with the  
16 girls?

17 MS. RHOADES: I would renew my objection. He's  
18 out of high school by the time he meets Morgan. So his  
19 prom night is not in the time period he's talking to  
20 Morgan.

21 THE COURT: On that basis -- do we have  
22 foundation.

23 MS. MCNEILL: I'll admit it through Mr. Honea.  
24 The State said he never spent time with girls his own  
25 age.

1           THE COURT: We were talking about the foundation  
2 that the court felt had been laid was the testimony was  
3 that this occurred during the time period Morgan was in  
4 their lives.

5           Can we clarify with the witness now if she been  
6 refreshed as to when it occurred.

7           MS. MCNEILL: Is it possible that it was one of  
8 these girls high school dances and not Joshes' prom he's  
9 accompanying them.

10          THE WITNESS: I'm trying to think when it was.

11          MS. MCNEILL: If you don't know, I'll move on.

12 BY MS. MCNEILL:

13          Q.        You indicated that Josh went to Cher a few  
14 times?

15          A.        Yes.

16          Q.        Do you know how many time he's gone to see  
17 Cher?

18          A.        4.

19          Q.        Showing you part of what's State's Exhibit 76

20 A.        Have you seen that photo before?

21          A.        Yes.

22          Q.        Are you aware that Josh took Morgan to see  
23 Cher?

24          A.        Yes.

25          Q.        He'd taken other girls to see Cher?

1 A. Yes.

2 Q. How many times has he seen Cher?

3 A. 4.

4 Q. Big Cher fan?

5 A. Yes.

6 Q. Showing you, again, this is State's 76 A.

7 Have you seen that photo before?

8 A. Yes.

9 Q. It says at the top Mandalay Bay?

10 A. Uh-huh.

11 Q. These pictures you've seen of Josh with Morgan  
12 they look like dates, right?

13 A. Yeah. But just like all his other friends.

14 Q. You have seen pictures of Josh in other  
15 similar situations with other girls?

16 A. Yes.

17 Q. Those girls that he was with were they  
18 dates?

19 A. They were all friends.

20 Q. Pictures you've seen of Josh and Morgan, he  
21 didn't hide those photos from you, did he?

22 A. No.

23 Q. Did there come a time when -- let me back up.  
24 When Morgan was at Johnson Middle School did Josh give her  
25 rides home from school?

1           A.       I don't know.

2           Q.       Do you remember what Joshes' schedule was like  
3 when Morgan was in 6th, 7th grade?

4           A.       It was very busy.

5           Q.       What kind of activities did he have?

6           A.       He was -- when he was 16 he went to the  
7 Explorer Program. And he was very busy with that.

8           Q.       Go back to when Morgan was in 6th, 7th grade  
9 Josh was out of high school?

10          A.       He was. He did not -- I'm sure of the years,  
11 but he did work at the jail. He was very active with  
12 Metro. He worked 7 days a week basically, because I used  
13 to tell him you needed to take a couple days off. He was  
14 always going.

15          Q.       Josh had a lot of things he'd do in his day?

16          A.       Yes.

17          Q.       Do you think he would have had time to pick up  
18 Morgan from school every day?

19                 MS. RHOADES: Observation, speculation.

20                 THE COURT: Seems like we have to have this  
21 discussion like with all of the witnesses. There may be  
22 objections posed. And to the degree you are talking over  
23 the question before it's finished and answered it's human  
24 nature to speak that way, but we are in court. Our  
25 reporter has to write everything down. You have to allow

1 counsel to finish the question, but if you can pause to  
2 make sure there's no objection the court needs to rule on  
3 before you answer, that would be fine.

4 The objection is sustained. It's speculation for her  
5 to know. But you can lay more foundation, if you wish.

6 BY MS. MCNEILL:

7 Q. You said you were aware of his schedule?

8 A. Yes.

9 Q. He had a job right?

10 A. Yes.

11 Q. As well as activities he was doing for  
12 Metro?

13 A. Yes.

14 Q. Was he -- after he graduated did he go to  
15 college?

16 A. He did go to college for I want to say about  
17 year-and-a-half.

18 Q. So he would have had classes and studying?

19 A. Criminal law was one of them.

20 Q. So he would have had to study and go to  
21 class?

22 A. Yes.

23 Q. He lived with you in that time period?

24 A. Yes.

25 Q. Fair to say that it seemed to you Josh was

1 very busy with activities other than Morgan?

2 A. Yes.

3 THE COURT: For foundation, we really need to  
4 understand the time frame here.

5 MS. MCNEILL: I keep saying the time period 6th  
6 and 7th grade or Josh is in high school.

7 THE COURT: That is where it get tricky. What  
8 time frame. Was it when he was in high school. We just  
9 had an objection that was sustained or at least an  
10 objection that was raised and document and already  
11 admitted, but that Morgan and Josh met each other after  
12 Josh was out of high school. There's been confuse through  
13 the witness of what time frame you're talking about and  
14 what he was doing at the time.

15 Maybe her 6th and 7th grade is too broad a time  
16 frame. Get us so we don't have further concerns about  
17 foundation.

18 BY MS. MCNEILL:

19 Q. You would agree with me this all happened a  
20 few years with Morgan being in your life?

21 A. Yes.

22 Q. It's a little difficult to remember back when  
23 these things happened?

24 A. I'm sorry.

25 Q. It's a little difficult to remember back when



1 these things happened?

2 A. Yes.

3 Q. When Morgan was in your life, fair to say you  
4 didn't think you would have to testify about these  
5 things?

6 MS. RHOADES: Objection, leading. Relevance.

7 THE COURT: Overruled. It's foundational. Get  
8 back to foundation for those questions, if we could, on  
9 the time, place. That would be helpful.

10 BY MS. MCNEILL:

11 Q. You didn't think you'd be coming in to testify  
12 about this?

13 A. Right.

14 Q. Okay. I wanted to talk about when Morgan was  
15 in high school. Remember Morgan starting high school?

16 A. Yes.

17 Q. And you may not know what year that was but  
18 you remember when Morgan began high school, right?

19 A. Yes.

20 Q. Where did she initially go to high school?

21 A. Desert Oasis.

22 Q. Did there come a time when Morgan wanted to  
23 change schools?

24 MS. RHOADES: Objection, speculation.

25 Foundation.

1 MS. MCNEILL: Not speculating. Everybody  
2 testified about it.

3 THE COURT: I will overrule on speculation  
4 grounds, but your witness -- I know we are trying to have  
5 some time efficiency here. I have given plenty of leeway  
6 to both counsel. We still have to lay foundation.

7 MS. MCNEILL: I would ask for the same leeway I  
8 gave the State on leading with their witnesses, your  
9 Honor.

10 THE COURT: I've given leeway to both counsel to  
11 have foundational, leading questions. I think that went  
12 to the heart of what we're trying to get to as opposed to  
13 foundational orientation, such as space and time.

14 BY MS. MCNEILL:

15 Q. You said that Morgan went to Desert Oasis,  
16 right?

17 A. Yes.

18 Q. Initially, when she started school?

19 A. Yes.

20 Q. Later did she go to Bonanza?

21 A. Yes.

22 Q. How do you know that?

23 A. She told me she wanted to move. She actually  
24 wanted to move to the school I was working at.

25 Q. You were aware she wanted to change schools?

1 A. Yes.

2 Q. She came to ask you for help?

3 A. Yes.

4 Q. Do you know why she wanted to move schools?

5 A. She said there was a problem with a boy  
6 there.

7 Q. Do you know who that boy was?

8 A. I have never seen him.

9 Q. Do you know his name?

10 A. Franco.

11 Q. Back in the end of 2014, into early 2015, did  
12 something happen in your own marriage?

13 A. Yes.

14 Q. What was that?

15 A. My husband and I got a divorce.

16 Q. And have known Josh your whole life?

17 A. Yes.

18 Q. You are aware and familiar with his demeanor  
19 and attitude and feelings and how he conveys them?

20 A. Yes.

21 Q. How did Josh respond to the divorce?

22 A. It was tough. He is very quiet and kept it  
23 in.

24 Q. Did you feel like it was a source of stress  
25 for him?

1           A.       Absolutely.

2                   MS. MCNEILL: Court's indulgence.

3                   THE COURT: Yes.

4 BY MS. MCNEILL:

5           Q.       Sorry. Thinking back to when Morgan was in  
6 your lives when she was in 6th and 7th grade, did Morgan  
7 either of those years spend Christmas at your house?

8           A.       Yes.

9           Q.       Was she alone?

10          A.       Her mother came over in the morning.

11          Q.       Did her mother spend the entire day, Christmas  
12 day with your family?

13          A.       No.

14          Q.       Did she leave at some point?

15          A.       She had breakfast with us. She wanted to see  
16 her friends and wanted to leave Morgan with us.

17          Q.       Did she ask if Morgan could stay there?

18          A.       Kind of. She said she was going to her  
19 friend's house. She had food that she was also bringing  
20 over there.

21          Q.       So wasn't really asking just assumed?

22          A.       Yes.

23          Q.       Did you ever see Pam give Josh money to take  
24 care of Morgan?

25          A.       No, but they told me a lot. Morgan did.

1 Q. Morgan told you that her mom gave Josh money  
2 to take care of heir?

3 A. Gave herself money, gave it to Morgan. She'd  
4 give it to Josh.

5 Q. But it was for the purposes of what?

6 A. Yes. Sorry. Dinner, you know, get food.

7 Q. All right.

8 MS. MCNEILL: Court's indulgence.

9 THE COURT: Yes.

10 BY MS. MCNEILL:

11 Q. Do you remember a time when Josh and Morgan  
12 went to Disneyland?

13 A. Yes.

14 Q. Remember what year that was. If you don't  
15 remember, that's fine. Look at the photo.

16 A. It was my first year working at Liberty High  
17 School.

18 Q. Let me approach and see if this refreshes your  
19 recollection?

20 A. Yes.

21 Q. Looking at that do you remember what year that  
22 was?

23 A. 2012.

24 Q. What do you remember about that trip?

25 A. Morgan's mom gave Morgan money to go on that

1 trip. And they went. It was a day trip. And Josh got  
2 sick on the very first ride.

3 Q. How do you know Josh got sick?

4 A. Morgan text me.

5 Q. Did you give -- based on that text, did you  
6 give Morgan advice?

7 A. Yes.

8 Q. What was your advice?

9 A. I told them to go to -- they had like the  
10 nurse area there, first aid area there to see if they had  
11 something like Dramamine for him to take.

12 Q. As Joshes' mom you are familiar with his  
13 medical history?

14 A. Yes.

15 Q. Is motion sickness a problem he has?

16 A. Yes.

17 Q. When he gets motion sickness -- have you seen  
18 him get motion sick?

19 A. Yes.

20 Q. Is it something that can last all day?

21 A. Yes.

22 Q. Then did you advice Morgan that maybe they  
23 should see if they should stay the night?

24 MS. RHOADES: Objection, leading.

25 THE COURT: Sustained.

1 BY MS. MCNEILL:

2 Q. Based on the fact you had the conversation  
3 about Josh getting ill, what did you do?

4 A. Knowing Josh and how he gets sick, he's flat  
5 on the ground. I told him to call your mom ask her if you  
6 can get a room for him to go to sleep. With the  
7 Dramamine, it would wear off, and she called me back and  
8 told me that her mom said it was okay.

9 Q. You were concerned that she have permission  
10 from Pam?

11 A. Yes. I was in training, so I couldn't do it  
12 myself. I wasn't allowed to use my phone. I had to leave  
13 the room.

14 MS. MCNEILL: Court's indulgence.

15 THE COURT: Yes.

16 MS. MCNEILL: Pass the witness.

17 THE COURT: Ms. Rhoades.

18 CROSS-EXAMINATION

19 BY MS. RHOADES:

20 Q. The trip to Disneyland, do you remember about  
21 when you got that -- you said there was a text from  
22 Morgan, right?

23 A. Yes.

24 Q. Did you speak with Morgan on the phone or was  
25 it all --

1           A.       I called her.

2           Q.       Let me finish the question. Was it all  
3 through texts?

4           A.       No.

5           Q.       On the phone as well?

6           A.       Yes.

7           Q.       Did you talk to Josh?

8           A.       Later on.

9           Q.       That day?

10          A.       A little later.

11          Q.       Do you remember when you got the text about  
12 him being sick, what time of day it was?

13          A.       It was the morning hours. I want to say it  
14 was -- I was in training -- I don't know.

15          Q.       You said he gets flat on his back when he's  
16 sick.

17          A.       He will throw up and get dizzy.

18          Q.       How long does it last?

19          A.       I get the same way. It lasts a long time.

20          Q.       How long, hours, days?

21          A.       Sometimes it lasts a couple of days.

22 Sometimes with -- the vertigo lasts -- sometimes it will  
23 be not bad, be a few hours, 6 hours, 7 hours. It just  
24 depends.

25          Q.       When it's not bad it will last 6, 7 hours,



1 right?

2 A. Sometimes less, just depends.

3 Q. He gets this sickness and you said it can last  
4 for hours, right?

5 A. It can last hours, couple hours to longer.

6 Q. Do you remember that picture you looked at  
7 with them in Disneyland -- publishing a portion of 76.

8 A. Yes.

9 Q. The lights are on so that looks like night  
10 hours in Disneyland?

11 A. Yes.

12 Q. Josh does not look sick in that picture, does  
13 he?

14 A. No. But he did go to the room and did rest.  
15 I spoke to him several times throughout the day and  
16 night.

17 Q. But you weren't there to know if he went to  
18 the room to rest. You just know what he told you,  
19 right?

20 A. Yes.

21 Q. Okay. Nobody else went on that trip just Josh  
22 and Morgan?

23 A. Right.

24 Q. Were you aware that Josh and Morgan also took  
25 a trip to San Diego, Carlsbad together?

1 A. Yes.

2 Q. That was alone just Josh and Morgan, right?

3 A. I'm not sure.

4 Q. None of -- you, your daughter, none of the  
5 family members went on that trip, right?

6 A. No.

7 Q. You knew that they were going on a trip  
8 together?

9 A. Yes.

10 Q. Alone?

11 A. Yes.

12 Q. Do you know if Josh took anyone else to  
13 Disneyland, any other girl alone to Disneyland?

14 A. I don't remember. I know he gone. He loves  
15 Disneyland.

16 Q. How about to the San Diego Wild Animal Park,  
17 Carlsbad area, has he taken another girl alone there?

18 A. I don't know. He likes going there.

19 Q. So the only girl that he traveled to both of  
20 those place alone would be Morgan, that you know of,  
21 right?

22 A. I'm not sure if there was anybody else.

23 Q. So the only girl that you know of he went to  
24 those places with is Morgan, correct?

25 A. I'm not sure if she was the only one he has

1 gone with.

2 Q. I'll ask the question again. You know they  
3 went to those places?

4 A. Yes.

5 Q. So the only girl that you know of that he went  
6 to those places alone with is Morgan; is that correct?

7 A. Yes.

8 Q. Do you know if he took weekend trips with any  
9 of the other 3 girls he took to the Cher concert -- 3  
10 friends. I don't think you said girls?

11 A. I don't remember.

12 Q. Where do you work at now?

13 A. Clark High School.

14 Q. You work -- you've worked at middle schools,  
15 high schools in what capacity?

16 A. In middle school I worked in the autism class  
17 and dean's office. In high school I've worked in dean's  
18 office.

19 Q. Do you know what a mandatory reporter is?

20 A. Um, I'm not sure.

21 Q. Well, your understanding that you are a  
22 mandatory reporter working with kids?

23 A. Yes.

24 Q. So what is your understanding of what a  
25 mandatory reporter is?

1 A. To report kids.

2 Q. For what?

3 A. Things they do. We do behavior management.

4 Q. About child abuse, sexual abuse?

5 A. Yes, behavior management.

6 Q. You have to report that when you see it,  
7 right?

8 A. In our office we do.

9 Q. You can get in trouble if you don't report  
10 it?

11 A. Our deans take care of it.

12 Q. There was testimony about Morgan's mother  
13 giving her money for food. You got that information from  
14 Morgan, right?

15 A. Yes.

16 Q. It was Morgan's mom gave Morgan money for food  
17 when she would leave. Not for her and Josh to go out or  
18 anything like that?

19 A. Not for her to go out and get food. She  
20 didn't drive.

21 Q. You said that you had a conversation with  
22 Morgan about Franco, remember that?

23 A. Yes.

24 Q. That is why she left Desert Oasis?

25 A. Yes.

1 Q. Are you aware that your son, Joshua, also had  
2 a conversation with Franco?

3 A. No.

4 Q. Are aware that Josh told Franco --

5 MS. MCNEILL: Objection. That's not in  
6 evidence.

7 THE COURT: Ms. Rhoades.

8 MS. RHOADES: Well, she testified why Morgan  
9 left. That is her statement. This is different then that  
10 testimony.

11 MS. MCNEILL: Your Honor, the statement is not  
12 admissible. If we may approach.

13 (Discussion held at the bench.)

14 THE COURT: The objection is sustained.  
15 Proceed.

16 BY MS. RHOADES:

17 Q. Are aware that Josh had a conversation on the  
18 telephone with Franco?

19 A. No.

20 Q. You don't know anything about that  
21 conversation?

22 A. No, I don't.

23 Q. You said that when Morgan was over at your  
24 house Josh was not there all the time, remember that  
25 testimony?

1 A. When Morgan was at my house?

2 Q. Yes.

3 A. Yes.

4 Q. Name the time that Morgan was at your house  
5 when Josh was not there?

6 A. She liked to listen to the scanner with me.

7 Q. How often would that be and when would that  
8 be?

9 A. Normally it would be like on Saturday nights,  
10 Sunday night when he worked.

11 Q. Would anybody else be at the house with you?

12 A. Yes.

13 Q. Who else would be there?

14 A. My daughter and my husband at that time.

15 Q. When else would she come over when Josh wasn't  
16 there?

17 A. Not that I can remember.

18 Q. How many times did she come over on a Saturday  
19 night to listen to Joshes' scanner while he was at work  
20 with you -- estimate?

21 A. I don't know how many times.

22 Q. Less than 5? More than 5?

23 A. Maybe about, give or take -- I'm not sure. I  
24 didn't count how many times. I don't know.

25 Q. Wasn't that often, was it?

1           A.       No.

2           Q.       Other than that Josh was always around, fair  
3 to say?

4           A.       Always around at home.

5           Q.       When Morgan was around you Josh was always  
6 around, other than those times?

7           A.       Yes. They would watch a movie in our family  
8 room. We'd all watch movies.

9           Q.       Remember one time you went to graduation when  
10 Josh wasn't there but Morgan was?

11          A.       Yes.

12          Q.       Do you remember what year that was?

13          A.       It was my daughter's graduation from high  
14 school and she called me and said she wanted to go. Josh  
15 had to work. Actually it was -- he worked with Metro. So  
16 I did pick her up and we went and the rest of our whole  
17 family was there.

18          Q.       What year was that?

19          A.       2014.

20          Q.       So other than that one time in 2014 and 5 or  
21 so times she came over to listen to Joshes' radio when  
22 Morgan was around Josh was with her; is that correct?

23          A.       Yes.

24          Q.       How long did Josh study criminal law for?

25          A.       In college?