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Respondent.

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CHRISTOPHER SENA
Case No. 79036

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1 I can put together the story, because I guess it goes back to
2 work, you know, if I'm investigating a situation, you know,
3 two people come back and they're saying the story and again,
4 it sounds very rehearsed then I'm like, eh, you guys, what
5 else is going on?

6 MS. RADOSTA: Right.

7 PROSPECTIVE JUROR NO. 152: And I might ask some
8 other folks like just a relationship with the person, you
9 know, is there a vendetta --

10 MS. RADOSTA: Okay.

11 PROSPECTIVE JUROR NO. 152: -- against them, because
12 I base that --

13 MS. RADOSTA: Okay.

14 PROSPECTIVE JUROR NO. 152: -- you know, in the --

15 MS. RADOSTA: All right.

16 PROSPECTIVE JUROR NO. 152: -- [inaudible].

17 MS. RADOSTA: So --

18 THE COURT: Ms. Radosta?

19 MS. RADOSTA: Yes.

20 THE COURT: Can you -- parties approach.

21 (Off-record bench conference)

22 MS. RADOSTA: And I'm sorry, now I've lost -- sorry,
23 let me get my train of thought back.

24 You were -- you were relating a situation that you
25 had had at work where you had had to try to figure out what

1 was going on between at least two employees and maybe more.
2 PROSPECTIVE JUROR NO. 152: Right.
3 MS. RADOSTA: And I think you had said something
4 along the lines of it seemed a little too rehearsed between
5 the two people --
6 PROSPECTIVE JUROR NO. 152: Right.
7 MS. RADOSTA: -- like maybe they had gotten together
8 and gotten their stories straight before they came to you?
9 PROSPECTIVE JUROR NO. 152: Right.
10 MS. RADOSTA: Is that a "yes"?
11 PROSPECTIVE JUROR NO. 152: Yes, ma'am.
12 MS. RADOSTA: Okay. So are you in a position at
13 work where you're in a supervisory position?
14 PROSPECTIVE JUROR NO. 152: Yes, ma'am.
15 MS. RADOSTA: Overseeing other -- other chefs or
16 other wait staff?
17 PROSPECTIVE JUROR NO. 152: Cooks.
18 MS. RADOSTA: Other cooks?
19 PROSPECTIVE JUROR NO. 152: Yes.
20 MS. RADOSTA: Okay. So have you had to make
21 decisions like that where you're kind of trying to figure it
22 all out in more than one occasion?
23 PROSPECTIVE JUROR NO. 152: Oh, yes.
24 MS. RADOSTA: And so you've done your own
25 investigation, I assume?

1 PROSPECTIVE JUROR NO. 152: Yes, ma'am.

2 MS. RADOSTA: As you just said, you then talk to
3 other people sometimes?

4 PROSPECTIVE JUROR NO. 152: Yes, ma'am.

5 MS. RADOSTA: And you are comfortable in that role
6 at work?

7 PROSPECTIVE JUROR NO. 152: Yes, ma'am.

8 MS. RADOSTA: I mean, I'm sure you don't love it,
9 but it is something that --

10 PROSPECTIVE JUROR NO. 152: Oh, I love it.

11 MS. RADOSTA: -- oh, you love it.

12 PROSPECTIVE JUROR NO. 152: Yeah.

13 MS. RADOSTA: Okay. What part of it do you love,
14 just the -- the figuring it all out or just being able to like
15 settle a dispute?

16 PROSPECTIVE JUROR NO. 152: Just settling the
17 dispute.

18 MS. RADOSTA: Okay. Okay. The fact that you have
19 four sons --

20 PROSPECTIVE JUROR NO. 152: Um-hum.

21 MS. RADOSTA: -- leads me to ask if some of the
22 alleged victims that are coming in here are boys, young men,
23 some of them say things may have happened to them around the
24 ages of your sons --

25 PROSPECTIVE JUROR NO. 152: Um-hum.

1 MS. RADOSTA: -- do you think that that would be
2 difficult for you to listen to just -- I mean, you're one of
3 the few people in here with all sons in your family, so.
4 PROSPECTIVE JUROR NO. 152: Right.
5 MS. RADOSTA: Do you think that that would be a
6 problem for you or --?
7 PROSPECTIVE JUROR NO. 152: No, ma'am.
8 MS. RADOSTA: It wouldn't enter -- you wouldn't be
9 thinking about your boys when --
10 PROSPECTIVE JUROR NO. 152: No.
11 MS. RADOSTA: -- the testimony was happening?
12 PROSPECTIVE JUROR NO. 152: No.
13 MS. RADOSTA: All right. Thank you.
14 Okay. I think that's all I have for your Mr. --
15 thank you.
16 Ms. Turner?
17 PROSPECTIVE JUROR NO. 153: Yes.
18 MS. RADOSTA: I just wanted to follow up with you a
19 little bit. You said that you have a friend that was -- I
20 think they still are --
21 PROSPECTIVE JUROR NO. 153: Correct. He's still
22 incarcerated.
23 MS. RADOSTA: -- still incarcerated. And you do go
24 up and visit him?
25 PROSPECTIVE JUROR NO. 153: I do.

1 MS. RADOSTA: Okay. And but you do feel though that
2 that it was an appropriate sentence --
3 PROSPECTIVE JUROR NO. 153: Correct.
4 MS. RADOSTA: -- for your friend? Okay. Did you
5 participate at all in his -- in the court case?
6 PROSPECTIVE JUROR NO. 153: No.
7 MS. RADOSTA: Did you speak on his behalf at
8 sentencing?
9 PROSPECTIVE JUROR NO. 153: No.
10 MS. RADOSTA: Okay. Did you know what was going on
11 when it was going on or just after the fact?
12 PROSPECTIVE JUROR NO. 153: No, I knew about it when
13 it was going on. I didn't know details, I only knew what was
14 on the news.
15 MS. RADOSTA: Okay. Okay. And that must have been
16 a bit of a shock the first time you see something on the news
17 like that of a -- with a friend?
18 PROSPECTIVE JUROR NO. 153: Yeah.
19 MS. RADOSTA: Yeah. I mean, it's just like wait a
20 minute, I know that name. That's not -- that's not where I
21 expected to hear his name.
22 PROSPECTIVE JUROR NO. 153: Right.
23 MS. RADOSTA: Okay. Did you -- did -- how did you
24 get in touch with him in order to start going to visit; was it
25 when he was still down here locally or?

1 PROSPECTIVE JUROR NO. 153: Yeah, I reached out to
2 him.

3 MS. RADOSTA: Okay. And you also have a 17-year old
4 son.

5 PROSPECTIVE JUROR NO. 153: Correct.

6 MS. RADOSTA: So same similar question to what I
7 just asked Mr. Wells-Thompson. We're going to have some young
8 men coming in here as some of the potential witnesses. Do you
9 think that the age range of your son, if these young men are
10 similarly aged, is that going to have an impact on you to
11 listen to them?

12 PROSPECTIVE JUROR NO. 153: No, that won't have a
13 impact. I do want to piggyback off of something that you guys
14 keep speaking on --

15 MS. RADOSTA: Sure.

16 PROSPECTIVE JUROR NO. 153: -- which is the video.

17 MS. RADOSTA: Okay.

18 PROSPECTIVE JUROR NO. 153: I'm okay with watching
19 it the first time. I don't want to have to repeatedly watch
20 it because I figure if we're watching it the first time, we're
21 watching it for details and to find out what is going on. So
22 I don't want to have to be put in the back to watch it three,
23 four, five times.

24 MS. RADOSTA: Okay. What if -- and I appreciate
25 your point, and thank you for sharing that. What if I point

1 out or make an argument or Mr. Lopez-Negrete makes a point
2 about something that we say is in the video or something along
3 those natures and you didn't see that; would you be inclined
4 in that situation to go back and look and go, why --

5 PROSPECTIVE JUROR NO. 153: Yeah.

6 MS. RADOSTA: -- so I appreciate you don't want to
7 just for, you know, just because I say, go watch it, you're
8 not going to necessarily go watch it. But if I point out
9 something and raise a question in your mind would you be open?

10 PROSPECTIVE JUROR NO. 153: I'm open to it. I will
11 go back to it if we can fast forward to that detail, then yes,
12 that's not a problem.

13 MS. RADOSTA: Okay.

14 PROSPECTIVE JUROR NO. 153: But to have to watch the
15 whole long five minutes or 30 minutes, it's like, we just
16 watched it.

17 MS. RADOSTA: Okay. And why are you hesitant to --
18 to -- and I know this might sounds like a somewhat silly
19 question, but why would you be hesitant to want to watch it
20 more than one time?

21 PROSPECTIVE JUROR NO. 153: That's -- if it's kiddy
22 porn I don't want to watch it multiple times.

23 MS. RADOSTA: Okay. Even if it is something as
24 important as the State has to prove somebody guilty beyond a
25 reasonable doubt and I'm standing up here and saying, but you

1 know what, I know that there's some stuff on that video but
2 you've got to watch it again because there's more to it.

3 PROSPECTIVE JUROR NO. 153: If I was told like that,
4 then I'll have to sit down and watch it again.

5 MS. RADOSTA: Okay. Is it possible, as well, that -
6 - and -- and is it -- is it possible that the first time that
7 you're watching something -- and we don't necessarily have to
8 talk specifically about the videos in this case -- but let's
9 say, you know, some movie that you've watched where there's a
10 surprise ending at the end, and then you watch the movie a
11 second time, and then you see all of these other things that
12 lead you right to the ending, but you didn't see them the
13 first time?

14 PROSPECTIVE JUROR NO. 153: It happens, but if it's
15 a surprise ending that I didn't like I won't watch it all the
16 way to the end.

17 MS. RADOSTA: Fair enough. Fair enough. I
18 certainly understand that. But is it -- is it possible that
19 the first time that you could watch something as graphic as --
20 as what this potentially could be, the -- you've read the
21 synopsis, that you almost might be distracted the first time
22 it's played, with just the fact that it's on and oh my
23 goodness, I can't believe I'm on this jury trial and oh my
24 word and not really paying as close attention to it as maybe
25 you should be.

1 PROSPECTIVE JUROR NO. 153: Me personally, no.
2 MS. RADOSTA: Right.
3 PROSPECTIVE JUROR NO. 153: Because I know we're
4 here to --
5 MS. RADOSTA: Okay.
6 PROSPECTIVE JUROR NO. 153: -- watch for the facts.
7 We're not here for anything other than that, but the facts
8 and --
9 MS. RADOSTA: Okay.
10 PROSPECTIVE JUROR NO. 153: -- that to be fact.
11 MS. RADOSTA: Do you think you might actually be
12 paying even closer attention to it because of the possibility
13 that I might stand up here and ask you to watch it a second
14 time?
15 PROSPECTIVE JUROR NO. 153: Yes.
16 MS. RADOSTA: Okay. All right. And that's -- and
17 that's fair. If you feel that you have watched it closely
18 enough, you know, that that's your purview as a juror, it
19 doesn't mean I'm -- I might not say it, but I appreciate your
20 -- your honesty. Thank you, Ms. Turner.
21 PROSPECTIVE JUROR NO. 153: You're welcome.
22 MS. RADOSTA: Mr. Finn, Juror No. 154.
23 PROSPECTIVE JUROR NO. 154: Yes, ma'am.
24 MS. RADOSTA: You -- I'm curious. You say that
25 you're working on the F22s.

1 PROSPECTIVE JUROR NO. 154: Yes, ma'am.

2 MS. RADOSTA: Did you ever fly the F-22s?

3 PROSPECTIVE JUROR NO. 154: No, ma'am.

4 MS. RADOSTA: No? Never?

5 PROSPECTIVE JUROR NO. 154: Strictly a maintenance

6 guy.

7 MS. RADOSTA: Okay. And you are retired U.S. Air

8 Force and now working as a civil contractor?

9 PROSPECTIVE JUROR NO. 154: Retired active duty and

10 basically doing similarly the same job --

11 MS. RADOSTA: Okay.

12 PROSPECTIVE JUROR NO. 154: -- just in a civil

13 service matter.

14 MS. RADOSTA: Okay. And you have adult daughters;

15 correct?

16 PROSPECTIVE JUROR NO. 154: Yes.

17 MS. RADOSTA: Do you have any grandkids?

18 PROSPECTIVE JUROR NO. 154: I do have two grandkids.

19 MS. RADOSTA: Okay. And what are their ages?

20 PROSPECTIVE JUROR NO. 154: One's two-and-a-half and

21 one's almost one.

22 MS. RADOSTA: Okay. And your daughter's ages again?

23 PROSPECTIVE JUROR NO. 154: 28 and 29.

24 MS. RADOSTA: Okay. Do you -- I mean, we've touched

25 on this with a lot of people -- the fact that you have kids

1 and grandkids, and just the nature of this --

2 PROSPECTIVE JUROR NO. 154: Right.

3 MS. RADOSTA: -- the nature of this case and the --

4 the synopsis that was in the Jury Questionnaire, do you think

5 it's something that you can set aside your -- your grandpa

6 feelings and your --

7 PROSPECTIVE JUROR NO. 154: Yes.

8 MS. RADOSTA: -- father feelings and be objective?

9 PROSPECTIVE JUROR NO. 154: Yes.

10 MS. RADOSTA: Okay. Is there any situation that you

11 could imagine hurting your child purposefully?

12 PROSPECTIVE JUROR NO. 154: No.

13 MS. RADOSTA: Or your grandchildren?

14 PROSPECTIVE JUROR NO. 154: No.

15 MS. RADOSTA: No. Even if it was a matter of you

16 versus, you know, hurt -- hurt your child or hurt you, would

17 you -- what choice would you make in that scenario?

18 PROSPECTIVE JUROR NO. 154: I'd want them to hurt

19 me --

20 MS. RADOSTA: All right.

21 PROSPECTIVE JUROR NO. 154: -- and protect the kids.

22 MS. RADOSTA: Okay. Do you think that that's a

23 normal reaction as a parent and grandparent?

24 PROSPECTIVE JUROR NO. 154: I would hope so.

25 MS. RADOSTA: Okay. All right. Thank you, Mr.

1 Finn.

2 PROSPECTIVE JUROR NO. 154: Yes.

3 MS. RADOSTA: Actually, I think it might be easiest
4 to just pass the mic down to Mr. Drosdahl.

5 Mr. Drosdahl, you -- you actually volunteered some
6 information yesterday, I believe, or maybe it was even the day
7 before, that when we were talking about witnesses and people
8 telling these stories and I think you had said, you know, some
9 people might have -- you think -- you thought it was worth
10 noting that some people might have an ulterior motive.

11 PROSPECTIVE JUROR NO. 255: Yes.

12 MS. RADOSTA: Some witnesses might have an ulterior
13 motive.

14 PROSPECTIVE JUROR NO. 255: That's correct.

15 MS. RADOSTA: Okay. What type of ulterior motives
16 could you imagine a witness having?

17 PROSPECTIVE JUROR NO. 255: Having an axe to grind
18 for whatever reason.

19 MS. RADOSTA: Okay.

20 PROSPECTIVE JUROR NO. 255: Holding a grudge, it
21 could be a million things.

22 MS. RADOSTA: Okay. How do you -- do you think
23 you'd be able to tell if a witness had an ulterior motive?

24 PROSPECTIVE JUROR NO. 255: Probably not if it
25 wasn't brought up as evidence during the trial.

1 MS. RADOSTA: Okay. Do you think when you're -- if
2 you would be selected to be on this jury, when you were
3 watching people testify would it -- would you be kind of like
4 tilting your head a little bit and going, hum, I wonder what
5 that's about, or would you just be listening and waiting for
6 us to ask questions?

7 PROSPECTIVE JUROR NO. 255: The latter.

8 MS. RADOSTA: Okay. Waiting for us to bring out
9 things of that nature?

10 PROSPECTIVE JUROR NO. 255: Yes.

11 MS. RADOSTA: Okay. But you did indicate on your
12 Jury Questionnaire that you believe that my client is innocent
13 until proven guilty?

14 PROSPECTIVE JUROR NO. 255: Yes.

15 MS. RADOSTA: Okay. And that the State has the
16 burden to prove him guilty; correct?

17 PROSPECTIVE JUROR NO. 255: Yes.

18 MS. RADOSTA: As he sits there today, do you see --
19 what do you see?

20 PROSPECTIVE JUROR NO. 255: An innocent man.

21 MS. RADOSTA: Okay. And if I, as I asked a few
22 other people earlier, if I didn't ask any questions, if I
23 didn't bring any ulterior motives to light but stood up at the
24 end of it all and said, the State did not prove these charges
25 beyond a reasonable doubt, would you be comfortable with me

1 having done my job that way?

2 PROSPECTIVE JUROR NO. 255: It would depend on the
3 strength of the State's evidence, I believe.

4 MS. RADOSTA: Okay. But you understand that I have
5 no obligation in the eyes of the Court to do anything more
6 than make the State prove their case?

7 PROSPECTIVE JUROR NO. 255: Yes, I understand that.

8 MS. RADOSTA: Okay. If you were selected as a juror
9 in this case and we went back in the jury -- you were -- went
10 back in the jury deliberation room and somebody back there
11 said, oh my gosh, you know, Ms. Radosta, Mr. Negrete, they've
12 -- they really just didn't do anything, and you could tell
13 that they didn't want to do anything; what would your response
14 to that be?

15 PROSPECTIVE JUROR NO. 255: Consider the evidence.

16 MS. RADOSTA: Okay. Would you remind anybody that
17 it's not -- that it's the State's burden?

18 PROSPECTIVE JUROR NO. 255: Absolutely.

19 MS. RADOSTA: Okay. Would you be comfortable
20 expressing that to other jurors if they were saying anything
21 that you might disagree with?

22 PROSPECTIVE JUROR NO. 255: Yes.

23 MS. RADOSTA: Okay. All right. Thank you, Mr.
24 Drosdahl.

25 PROSPECTIVE JUROR NO. 255: You're welcome.

1 MS. RADOSTA: And then I actually would like to
2 speak to Mr. Johnson-George, 252.

3 You've been very, very quiet. I almost forgot you
4 were there. I think you learned from Ms. Cornwell earlier
5 that, you know, yeah, that you don't talk too much and you
6 kind of -- you can just kind of -- yeah.

7 PROSPECTIVE JUROR NO. 252: Exactly.

8 MS. RADOSTA: You -- I saw you actually when she
9 kept getting called on you were like, why do you -- why do you
10 keep nodding your head?

11 So you indicated that you did have a friend that had
12 a bad experience --

13 PROSPECTIVE JUROR NO. 252: Yes.

14 MS. RADOSTA: -- is that correct?

15 PROSPECTIVE JUROR NO. 252: Yes.

16 MS. RADOSTA: That they -- was it a -- I believe
17 that you said that he or she was raped by their brother?

18 PROSPECTIVE JUROR NO. 252: Yes.

19 MS. RADOSTA: Okay. How long ago did this incident
20 happen, if you know?

21 PROSPECTIVE JUROR NO. 252: I mean, well, she's in
22 her 20s now and this happened probably like when she was --
23 I'd say like maybe like 10 or younger maybe.

24 MS. RADOSTA: Okay. Okay. And it was a brother
25 that was living in the home with her, if you know?

1 PROSPECTIVE JUROR NO. 252: I assume so.
2 MS. RADOSTA: Okay.
3 PROSPECTIVE JUROR NO. 252: I think so.
4 MS. RADOSTA: Did you hear the story directly from
5 your friend --
6 PROSPECTIVE JUROR NO. 252: Yes.
7 MS. RADOSTA: -- or did you hear it through -- okay.
8 PROSPECTIVE JUROR NO. 252: Yeah, from her.
9 MS. RADOSTA: Okay. How long ago did you hear the
10 story?
11 PROSPECTIVE JUROR NO. 252: This was when we were in
12 high school, so it had to be at least -- at least seven or so
13 years ago.
14 MS. RADOSTA: Okay. Are you still friends with her
15 now?
16 PROSPECTIVE JUROR NO. 252: Yes.
17 MS. RADOSTA: Okay. Is it something that she's ever
18 talked about again with you?
19 PROSPECTIVE JUROR NO. 252: Not in any further
20 detail, but I've heard it like multiple times.
21 MS. RADOSTA: Okay. Since you're friends with her,
22 did you know her brother?
23 PROSPECTIVE JUROR NO. 252: No.
24 MS. RADOSTA: Okay. And when she -- when she told
25 you the story was it just in passing or did -- was something

1 -- did something happen and she's like, I need to share
2 something with you?

3 PROSPECTIVE JUROR NO. 252: I mean, it wasn't like
4 in a serious -- okay, well, okay, basically, we were kind of
5 -- it was a discussion about like our first like sexual
6 experiences or whatever --

7 MS. RADOSTA: Um-hum.

8 PROSPECTIVE JUROR NO. 252: -- and then hers was
9 just like oh, well, my first time I was raped and I was just
10 like, oh.

11 MS. RADOSTA: Oh, yeah. Was it just --

12 PROSPECTIVE JUROR NO. 252: [Inaudible].

13 MS. RADOSTA: -- the two of you or was it a group?

14 PROSPECTIVE JUROR NO. 252: It was like a group --

15 MS. RADOSTA: Okay.

16 PROSPECTIVE JUROR NO. 252: -- thing.

17 MS. RADOSTA: Did -- I'm guessing that kind of
18 stopped the conversation a little bit, or no?

19 PROSPECTIVE JUROR NO. 252: No.

20 MS. RADOSTA: No? Okay. Did you ever have a
21 separate conversation with her just you and she alone?

22 PROSPECTIVE JUROR NO. 252: Yes.

23 MS. RADOSTA: Okay. That same night or another --

24 PROSPECTIVE JUROR NO. 252: No, like later. It's
25 been --

1 MS. RADOSTA: Later on?

2 PROSPECTIVE JUROR NO. 252: -- yeah, it's come up

3 again.

4 MS. RADOSTA: Okay. Was there ever -- when she said

5 it in that environment with other people around was there any

6 part of you that thought, I don't know if I believe her, or

7 did you automatically believe her?

8 PROSPECTIVE JUROR NO. 252: I believed her.

9 MS. RADOSTA: Okay. Even though that was kind of an

10 odd way to reveal it, in public, in front of a bunch of

11 people?

12 PROSPECTIVE JUROR NO. 252: Yeah, even though -- I -

13 - I -- I don't know if I would say that kind of made me --

14 well, I won't say it made me believe her more, but it was just

15 kind of like a -- I don't know, but it -- I didn't take that

16 into account like oh, wow, you're saying this in front of

17 other people or you're -- that's probably not true. I

18 didn't --

19 MS. RADOSTA: Well --

20 PROSPECTIVE JUROR NO. 252: -- think about that.

21 MS. RADOSTA: -- is it fair to say that there was

22 just something in the way she told it that made her believable

23 to you?

24 PROSPECTIVE JUROR NO. 252: Yes.

25 MS. RADOSTA: Okay. And she was a friend that you

1 knew well enough that you could tell if she was lying or not
2 lying?

3 PROSPECTIVE JUROR NO. 252: Yes.

4 MS. RADOSTA: Okay.

5 PROSPECTIVE JUROR NO. 252: Absolutely.

6 MS. RADOSTA: All right. That's fair enough.

7 THE COURT: Ms. Radosta, let's take a 15-minute
8 break; all right?

9 MS. RADOSTA: Okay.

10 THE COURT: Give everybody a chance to stretch. I
11 hear everybody moving around over there and --

12 MS. RADOSTA: Okay.

13 THE COURT: -- I -- I think the jurors in the front,
14 too, these chairs aren't as comfortable --

15 UNIDENTIFIED SPEAKER: They're not comfortable.

16 THE COURT: -- as the ones back there.

17 UNIDENTIFIED SPEAKER: Can we rotate?

18 THE COURT: So once again, ladies and gentlemen,
19 during this recess you're admonished not to talk or converse
20 amongst yourselves with anyone else on any subject connected
21 with this trial. You're not to read, watch or listen to any
22 report or commentary on this trial or any person connected
23 with this trial by any medium of information including without
24 limitation to newspapers, television the Internet or radio, or
25 form or express any opinion on subject connected with this

1 trial until it is finally submitted to you.

2 It's now -- let's say -- let's say be back and ready
3 to get going by 2:30; okay? All right. We'll be at ease
4 while the jury exits the courtroom.

5 (Outside the presence of the prospective jurors)

6 THE COURT: Okay. We're outside the presence of the
7 jury. Be ready to come back by -- by 2:30. Does anybody need
8 to put anything on the record at this time?

9 MS. RADOSTA: No, Your Honor.

10 THE COURT: All right. Thank you. We're off the
11 record.

12 (Court recessed at 2:12 P.M., until 2:32 P.M.)

13 (Outside the presence of the prospective jurors)

14 THE COURT: All right. Do you want to go ahead and
15 get the jury back in?

16 THE MARSHAL: Yes.

17 (Pause in the proceedings)

18 THE MARSHAL: All rise for the prospective jury.

19 (Inside the presence of the prospective jury)

20 THE COURT: Okay. Everybody go ahead and have a
21 seat. We're back on the record in the case of the State of
22 Nevada versus Christopher Sena in C-311453. I'd like the
23 record to reflect the presence of the defendant and his
24 counsel, as well as the State and their counsel, and all
25 members of the prospective jury panel.

1 Do the parties stipulate to the prospective jury
2 panel?

3 MR. SWEETIN: Yes, Judge.

4 MS. RADOSTA: Yes, Judge.

5 THE COURT: Ms. Radosta, before you go any further,
6 I received a note from my Marshal with regards to Mr. Faller.

7 Mr. Faller, it indicates that you believe that you
8 -- you've remembered that you were once a victim of a crime.
9 When I was speaking to you before you indicated that -- that
10 your family was a victim of home burglary and -- your sister
11 was a victim of a home burglary and car burglary. So it's
12 something additional?

13 PROSPECTIVE JUROR NO. 521: Yes, sir.

14 THE COURT: Okay. What do you want to tell us?

15 PROSPECTIVE JUROR NO. 521: I guess, I would have
16 been the victim of, I guess it would be armed robbery.

17 THE COURT: Okay. When did that happen?

18 PROSPECTIVE JUROR NO. 521: In between probably 15
19 and 20 years ago.

20 THE COURT: Okay. Here in Las Vegas?

21 PROSPECTIVE JUROR NO. 521: No.

22 THE COURT: Where did it occur?

23 PROSPECTIVE JUROR NO. 521: In Illinois.

24 THE COURT: Okay. When we were talking about it
25 yesterday, is -- can you think of any reason that you might

1 have not remembered it and -- and then remembered it today or?
2 PROSPECTIVE JUROR NO. 521: Partly just because I
3 was going through that whole list of --
4 THE COURT: Yeah.
5 PROSPECTIVE JUROR NO. 521: -- things and it just
6 got lost.
7 THE COURT: Okay.
8 PROSPECTIVE JUROR NO. 521: And it wasn't that
9 important --
10 THE COURT: Okay.
11 PROSPECTIVE JUROR NO. 521: -- to me.
12 THE COURT: Okay. All right. So -- so then that
13 leads me to my next question that I've asked everyone; is
14 there anything about that incident that you think would affect
15 your ability to be fair and impartial in this matter?
16 PROSPECTIVE JUROR NO. 521: No.
17 THE COURT: Okay. Did they catch anybody?
18 PROSPECTIVE JUROR NO. 521: No.
19 THE COURT: All right. How old were you?
20 PROSPECTIVE JUROR NO. 521: In between -- or roughly
21 25.
22 THE COURT: Okay. So were you still in school?
23 PROSPECTIVE JUROR NO. 521: No.
24 THE COURT: All right. Okay. Somebody put a gun
25 your face or what --

1 PROSPECTIVE JUROR NO. 521: We had a poker game that
2 was robbed.

3 THE COURT: Okay. So while you were involved in a
4 poker game somebody showed up there with a --

5 PROSPECTIVE JUROR NO. 521: Yes, multiple
6 individuals with guns.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR NO. 521: Held us up.

9 THE COURT: All right. And so you weren't the only
10 one that was -- was involved in that as a victim of a robbery
11 in that case?

12 PROSPECTIVE JUROR NO. 521: No.

13 THE COURT: Okay. And you're saying that -- that
14 nothing about that particular case you think would affect your
15 ability to be fair and impartial here?

16 PROSPECTIVE JUROR NO. 521: No.

17 THE COURT: Okay. All right.

18 Ms. Radosta?

19 MS. RADOSTA: Thank you. Actually, as long as --
20 Mr. Faller, as long as you have the mic, I wasn't quite up to
21 you but I'm -- I'll just keep it there.

22 I'm kind of curious -- I'm sorry, I don't have my
23 note for you right in front of me right now -- you say you
24 were working as an analyst and writer about Fantasy Football?

25 PROSPECTIVE JUROR NO. 521: Yes. And the NFL.

1 MS. RADOSTA: And the NFL?

2 PROSPECTIVE JUROR NO. 521: Yes.

3 MS. RADOSTA: Okay. So -- and you also, I think,
4 mentioned -- listed on your -- on your Jury Questionnaire
5 professional gambler?

6 PROSPECTIVE JUROR NO. 521: I was at one time, yes.

7 MS. RADOSTA: Okay. What -- in poker, I'm assuming,
8 or --

9 PROSPECTIVE JUROR NO. 521: Yes.

10 MS. RADOSTA: -- sports betting? Poker?

11 PROSPECTIVE JUROR NO. 521: Poker.

12 MS. RADOSTA: Is that what brought you to Las Vegas?

13 PROSPECTIVE JUROR NO. 521: Kind of. I was out of
14 school --

15 MS. RADOSTA: Okay.

16 PROSPECTIVE JUROR NO. 521: -- and I hadn't got a
17 job yet. So we came for the World Series of Poker --

18 MS. RADOSTA: Um-hum.

19 PROSPECTIVE JUROR NO. 521: -- in June, I believe it
20 was June. But it was about like six months after I graduated.

21 MS. RADOSTA: Okay.

22 PROSPECTIVE JUROR NO. 521: And I hadn't yet had a
23 job there so I figured I could stay here as well as where I
24 was at --

25 MS. RADOSTA: Sure.

1 PROSPECTIVE JUROR NO. 521: -- looking for a job.
2 MS. RADOSTA: And, I'm sorry, you're from --
3 PROSPECTIVE JUROR NO. 521: Originally, Illinois.
4 MS. RADOSTA: Okay. And you went to school in
5 Illinois, or no?
6 PROSPECTIVE JUROR NO. 521: I did my bachelors in
7 Illinois, at the University of Illinois and I did my Masters
8 at the University of Oregon.
9 MS. RADOSTA: Okay. So when you said you came here
10 to Vegas and you could just as easily stay here and look for a
11 job as staying there, where is there?
12 PROSPECTIVE JUROR NO. 521: Oregon at the time.
13 MS. RADOSTA: At the time, Oregon. Vegas a little
14 bit more fun than Oregon looking for a job?
15 PROSPECTIVE JUROR NO. 521: Yeah, it's different.
16 MS. RADOSTA: And so you decided to stay here. Did
17 you play in the World Series of Poker that year or were you
18 just here to watch?
19 PROSPECTIVE JUROR NO. 521: I was playing.
20 MS. RADOSTA: Okay. And so it sounds like
21 obviously, as you just related the story of when you -- about
22 15 years ago there was a home poker game. Have you been
23 playing poker for a lot of years?
24 PROSPECTIVE JUROR NO. 521: Yes.
25 MS. RADOSTA: Okay. And the incident back when you

1 were -- I'm sorry, you were how old when the poker game was
2 robbed, maybe --

3 PROSPECTIVE JUROR NO. 521: Approximately, 25.

4 MS. RADOSTA: Okay. So did you guys -- six, seven
5 people at the poker game, I'm assuming, maybe more?

6 PROSPECTIVE JUROR NO. 521: In that range.

7 MS. RADOSTA: In that range. And was this a weekly
8 poker game, people in the neighborhood knew about or?

9 PROSPECTIVE JUROR NO. 521: Yes.

10 MS. RADOSTA: Okay. Was it something where it was
11 known that there was money, a lot of money being played or
12 being passed around the table?

13 PROSPECTIVE JUROR NO. 521: Yes, at least by the
14 people who played.

15 MS. RADOSTA: Okay. Do you think or do you know if
16 the people that -- the people or person that came in and --
17 and robbed the poker game, did you know them?

18 PROSPECTIVE JUROR NO. 521: It was -- they had
19 masks --

20 MS. RADOSTA: Okay.

21 MR. SAVAGE: -- so we didn't know who they were.
22 But it was suspected that someone at the -- who played at the
23 game related the information to them.

24 MS. RADOSTA: Okay. Did you ever get any
25 confirmation of that --

1 PROSPECTIVE JUROR NO. 521: No.

2 MS. RADOSTA: -- suspicion? Okay. Did you continue
3 to have that weekly poker game after that incident?

4 PROSPECTIVE JUROR NO. 521: No.

5 MS. RADOSTA: Okay. So there was some fallout to
6 the -- to the incident with the -- with the guns?

7 PROSPECTIVE JUROR NO. 521: Yes.

8 MS. RADOSTA: About -- so I think I had said like
9 six, seven people at the poker game. How many people came in
10 with guns?

11 PROSPECTIVE JUROR NO. 521: Three.

12 MS. RADOSTA: Three? So at any point in time, was a
13 gun actually pointed directly at you?

14 PROSPECTIVE JUROR NO. 521: I do not believe so.

15 MS. RADOSTA: Okay. Were they, the three
16 individuals with guns, were they ever pointing guns at anybody
17 or were they just kind of waving them around to the group at
18 large?

19 PROSPECTIVE JUROR NO. 521: I didn't ever -- or
20 excuse me -- I never saw them pointed at anyone.

21 MS. RADOSTA: Okay. Give an approximation how long
22 did the entire incident last, if you recall?

23 PROSPECTIVE JUROR NO. 521: Less than 15 minutes.

24 MS. RADOSTA: Okay. After it was done, did you guys
25 think about calling the police or no?

1 PROSPECTIVE JUROR NO. 521: We did.

2 MS. RADOSTA: Okay. And did the police show up and
3 take -- take statements from everyone?

4 PROSPECTIVE JUROR NO. 521: Yes.

5 MS. RADOSTA: Okay. And there was just no follow up
6 because -- I'm guessing because the people wore masks or?

7 PROSPECTIVE JUROR NO. 521: Uh, I think it was
8 primarily because they suspected the people were from Chicago
9 and where we were at at the time was approximately three-and-
10 a-half hours south of there.

11 MS. RADOSTA: Okay. What --

12 PROSPECTIVE JUROR NO. 521: So they were not able to
13 recover anything.

14 MS. RADOSTA: All right. Okay. Did you find that
15 to be frustrating?

16 PROSPECTIVE JUROR NO. 521: No.

17 MS. RADOSTA: Okay. Did you -- okay, strike that
18 last "did you". And, I'm sorry, your Masters Degree was in
19 something that I didn't expect -- economics.

20 PROSPECTIVE JUROR NO. 521: That is correct.

21 MS. RADOSTA: Okay. So how do you get from
22 economics -- and actually, I could maybe see the -- the line
23 to Fantasy Football, the like running the -- the scenarios and
24 things of that nature. Does economics play into it at all, or
25 am I completely off base?

1 PROSPECTIVE JUROR NO. 521: Yes. A lot -- a lot of
2 the course work in economics deals with statistical and data
3 analysis and that naturally lends itself to Fantasy Football.
4 MS. RADOSTA: Okay. So you are actually using your
5 economics degree?
6 PROSPECTIVE JUROR NO. 521: Yes.
7 MS. RADOSTA: Or we are --
8 PROSPECTIVE JUROR NO. 521: At least a portion of
9 it.
10 MS. RADOSTA: -- because your Masters in -- in
11 economics. Did you foresee going in this direction when you
12 were in school for the masters?
13 PROSPECTIVE JUROR NO. 521: Absolutely not.
14 MS. RADOSTA: Okay. Is it something though that
15 you're enjoying?
16 PROSPECTIVE JUROR NO. 521: It is enjoyable.
17 MS. RADOSTA: Okay. I might want to talk to you
18 before next season because I didn't do so well this season in
19 my Fantasy Football. But -- and then you also write articles
20 just for the NFL?
21 PROSPECTIVE JUROR NO. 521: Yes.
22 MS. RADOSTA: Is it -- are they published in like
23 the NFL magazine or published on the website or --
24 PROSPECTIVE JUROR NO. 521: About the NFL.
25 MS. RADOSTA: Oh, about the NFL.

1 PROSPECTIVE JUROR NO. 521: Not for the NFL.

2 MS. RADOSTA: Okay. So are you -- are you like on
3 spec for your articles or do you work for a specific --

4 PROSPECTIVE JUROR NO. 521: For a specific website.

5 MS. RADOSTA: Okay. And so are you by being here
6 this week, right before the Super Bowl, is it impacting your
7 ability to write anything or -- or earn any money?

8 PROSPECTIVE JUROR NO. 521: No.

9 MS. RADOSTA: Okay. Have you already made your --
10 are you making predictions for the Super Bowl?

11 PROSPECTIVE JUROR NO. 521: I've already made them.

12 MS. RADOSTA: Okay. All right. I will not ask.
13 Let me see if I had anything else for you. My apologizes, as
14 I said, your notes weren't right in front of me. I think
15 that's all I had for you, Mr. Faller.

16 Okay. Thank you. Could you actually pass it down
17 to -- back to Ms. Cornwell? Cornwell or Cornwell?

18 PROSPECTIVE JUROR NO. 245: Cornwell.

19 MS. RADOSTA: Cornwell. My apologies.

20 PROSPECTIVE JUROR NO. 245: Oh, it's fine.

21 MS. RADOSTA: You actually related a story about
22 your -- and I apologize if it was stepbrother or stepsister.

23 PROSPECTIVE JUROR NO. 245: Stepbrother.

24 MS. RADOSTA: Stepbrother and his mom.

25 PROSPECTIVE JUROR NO. 245: Yes.

1 MS. RADOSTA: So it's not your stepmom but his --
2 PROSPECTIVE JUROR NO. 245: No.
3 MS. RADOSTA: -- mom -- oh my goodness -- that was a
4 "no".
5 PROSPECTIVE JUROR NO. 245: No.
6 MS. RADOSTA: And he was living in your home with
7 you and your mom and your dad, I am assuming?
8 PROSPECTIVE JUROR NO. 245: Yes. All -- all of us
9 kids did 50 percent off so one week -- one week so --
10 MS. RADOSTA: Okay.
11 PROSPECTIVE JUROR NO. 245: we would all be in the
12 same household on the same week.
13 MS. RADOSTA: Okay. And at some point in time there
14 was -- there was -- I believe the way you were referring to it
15 is the stories told about your mom that simply were not true.
16 PROSPECTIVE JUROR NO. 245: Yes.
17 MS. RADOSTA: By your stepbrother and his mother?
18 PROSPECTIVE JUROR NO. 245: Yes.
19 MS. RADOSTA: And the phrase that -- that I thought
20 I heard you say is that they -- they -- well, they got in
21 touch with CPS, Child Protective Services, and started an
22 investigation against your mom.
23 PROSPECTIVE JUROR NO. 245: Yeah. So basically how
24 -- how it all started was -- and I could be a little messy
25 because we were all like eight years old at the time.

1 MS. RADOSTA: Okay.

2 PROSPECTIVE JUROR NO. 245: But it was always a
3 rough relationship between everybody just because he was a
4 troubled child. But he never really liked my mom and his dad
5 being together and he was angry about it. He had gone and
6 told -- I don't know if he told my aunt and uncle first on his
7 dad's side or if he told his mother first. I'm not quite
8 positive.

9 But they had -- like he actually bruised himself and
10 they created evidence --

11 MS. RADOSTA: Okay.

12 PROSPECTIVE JUROR NO. 245: -- and then one of those
13 adults had gone to CPS.

14 MS. RADOSTA: Okay. And that was actually the part
15 of the story that I was curious about because I believe you
16 actually said "created" -- "creating" or "created" bruises.

17 PROSPECTIVE JUROR NO. 245: Um-hum.

18 MS. RADOSTA: How much older -- you said you were
19 about eight; how much older than you was he?

20 PROSPECTIVE JUROR NO. 245: We're actually the same
21 age. He's only a month older than I am.

22 MS. RADOSTA: Okay. So at that age, eight, nine
23 years old, he was able to create bruises on himself to make
24 your mother get in trouble?

25 PROSPECTIVE JUROR NO. 245: Yes. I believe it was

1 between him and another cousin we have on our stepfather's
2 side who's about three years older than us.

3 MS. RADOSTA: Okay.

4 PROSPECTIVE JUROR NO. 245: Because he was over at
5 my aunt's and uncle's house, I think that they -- I believe
6 what ended up being found out as they were like the older
7 cousin helped him --

8 MS. RADOSTA: Okay.

9 PROSPECTIVE JUROR NO. 245: -- do this.

10 MS. RADOSTA: Okay. And is this something that --
11 I mean, I didn't realize that you were quite that -- that you
12 were quite that young when this was all going on. Did you
13 realize what was going on at the time or is it something as
14 you got a little bit older that you like remember back and
15 asked your mom about, what was all of that?

16 PROSPECTIVE JUROR NO. 245: No, I knew, because I
17 don't have a good relationship with my father.

18 MS. RADOSTA: Okay.

19 PROSPECTIVE JUROR NO. 245: And I -- we were
20 actually -- well, I can't speak for my brother, my birth
21 brother, but --

22 MS. RADOSTA: Um-hum.

23 PROSPECTIVE JUROR NO. 245: -- I was terrified to
24 get taken out of my mother's and my stepfather's house to have
25 to go to my father's house.

1 MS. RADOSTA: Okay. Okay. And I apologize, I think
2 I missed that part of the story. So of course you --
3 PROSPECTIVE JUROR NO. 245: Oh, no, yeah, I don't
4 [inaudible].
5 MS. RADOSTA: -- of course you realized it at the
6 time.
7 PROSPECTIVE JUROR NO. 245: Um-hum.
8 MS. RADOSTA: Did they ever -- did Child Protective
9 Services ever come and ask you if their -- if you had
10 experience any violence?
11 PROSPECTIVE JUROR NO. 245: Yeah. My brother and I
12 were actually at the turning point in the case because they
13 had come and interviewed us in our home --
14 MS. RADOSTA: Um-hum.
15 PROSPECTIVE JUROR NO. 245: -- multiple times over
16 the course of several months.
17 MS. RADOSTA: Okay. And based on your and your
18 brother's statements you -- you were eventually able to go
19 back to your mom?
20 PROSPECTIVE JUROR NO. 245: We never actually gotten
21 taken out of the home.
22 MS. RADOSTA: Okay.
23 PROSPECTIVE JUROR NO. 245: Because my -- my mom and
24 my stepdad jumped on it pretty quick, got lawyers and it was
25 all figured out relatively soon. My stepbrother was actually

1 never even taken out of the home because it was figured out
2 very quickly --

3 MS. RADOSTA: Okay.

4 PROSPECTIVE JUROR NO. 245: -- that it was
5 fabricated.

6 MS. RADOSTA: And after everything settled down in
7 the home were here hard feelings towards your stepbrother from
8 your mom and -- his dad and your mom?

9 PROSPECTIVE JUROR NO. 245: Not between them, me and
10 my stepbrother actually just recently began speaking again
11 within the last two to three years but --

12 MS. RADOSTA: Okay. And --

13 PROSPECTIVE JUROR NO. 245: -- I had hard feelings
14 towards him.

15 MS. RADOSTA: -- all stemming from that?

16 PROSPECTIVE JUROR NO. 245: Oh, yeah. I mean, if
17 somebody's trying to take me from my mom, I don't care how old
18 he is, it was --

19 MS. RADOSTA: Right.

20 PROSPECTIVE JUROR NO. 245: -- personal.

21 MS. RADOSTA: Absolutely. And you -- in your
22 opinion he was not just lying but also trying to create
23 evidence against your mom?

24 PROSPECTIVE JUROR NO. 245: Um-hum. Yes.

25 MS. RADOSTA: Even if they believed it for half a

1 second, that's your mom; right?

2 PROSPECTIVE JUROR NO. 245: Yes.

3 MS. RADOSTA: Okay. Well, I hope now that you have
4 made an effort with your -- with your stepbrother that I hope
5 it works out since that seems to be what you want at this
6 point, so.

7 PROSPECTIVE JUROR NO. 245: It -- it's gotten
8 better, yeah.

9 MS. RADOSTA: That's good. The only other thing
10 that I wanted to touch base with you about was it was awhile
11 ago when I think Ms. Sudano asked the group at large if
12 anybody would feel like describing their last consensual
13 sexual experience and you were one of the few people that
14 actually -- yeah -- but you -- you just -- you -- I think you
15 visibly shook a little bit and was like, absolutely no.

16 PROSPECTIVE JUROR NO. 245: I -- I didn't -- my body
17 didn't shake but my head was --

18 MS. RADOSTA: Your head was --

19 PROSPECTIVE JUROR NO. 245: -- [inaudible].

20 MS. RADOSTA: Okay. Fair enough. And -- but you --
21 it's a consensual sexual experience.

22 PROSPECTIVE JUROR NO. 245: Oh, yeah.

23 MS. RADOSTA: You -- you did absolutely nothing
24 wrong. Sex is something that, you know, all adults do.

25 PROSPECTIVE JUROR NO. 245: Um-hum.

1 MS. RADOSTA: And yet that's not something that you
2 would feel comfortable talking about in front of strangers.
3 PROSPECTIVE JUROR NO. 245: Correct.
4 MS. RADOSTA: Probably not in front of your family
5 either.
6 PROSPECTIVE JUROR NO. 245: Correct.
7 MS. RADOSTA: Okay. But the fact that there are
8 going to be witnesses coming in here and having to talk about
9 some difficult topics and they are going to be subject to both
10 questions from the State and questions from the defense, are
11 you going to hold that against either one of us?
12 PROSPECTIVE JUROR NO. 245: Oh, no, not at all.
13 MS. RADOSTA: Okay.
14 PROSPECTIVE JUROR NO. 245: I understand other
15 people are able to, whether it's consensual or non-consensual,
16 able to speak about it and I would be able if technically
17 needed just --
18 MS. RADOSTA: Okay.
19 PROSPECTIVE JUROR NO. 245: -- [inaudible] us to do.
20 MS. RADOSTA: It's not something you want to sign up
21 for.
22 PROSPECTIVE JUROR NO. 245: No.
23 MS. RADOSTA: I get that.
24 PROSPECTIVE JUROR NO. 245: No, I won't put my name
25 on the list anytime soon.

1 MS. RADOSTA: What if, though, it seems that either
2 the State's questions or my questions or Mr. Negrete's
3 questions are making the witness uncomfortable and yet we
4 continue to push on; would you hold that against -- well, more
5 specifically, myself and Mr. Negrete?

6 PROSPECTIVE JUROR NO. 245: Not at all, because you
7 have to be able to find evidence. So, I mean, for lack of a
8 better -- you've got to do what you gotta do and that's what
9 you gotta do.

10 MS. RADOSTA: Okay. All right. Thank you.
11 If you could pass the mic to Mr. -- Wohletz.

12 PROSPECTIVE JUROR NO. 190: Wohletz.

13 MS. RADOSTA: Wohletz. Thank you. Juror 190.
14 Mr. -- well, how are (indecipherable)?

15 PROSPECTIVE JUROR NO. 190: Wohletz.

16 MS. RADOSTA: Wohletz.

17 PROSPECTIVE JUROR NO. 190: Yes.

18 MS. RADOSTA: I know I'll get it. I don't know how
19 I'm going to phonetically write it down but I think I got it.
20 Wohletz.

21 So you had a prior jury experience several years ago
22 where it -- the -- the case actually started --

23 PROSPECTIVE JUROR NO. 190: Yes.

24 MS. RADOSTA: -- and the it -- they -- they called
25 you back in and said everybody can go home?

1 PROSPECTIVE JUROR NO. 190: Yes. We -- we -- well,
2 we went through jury selection and then a few -- that was --
3 that was before lunch.

4 MS. RADOSTA: Um-hum.

5 PROSPECTIVE JUROR NO. 190: After lunch there was
6 some testimony, a police officer came in, the -- there was a
7 -- a defendant -- an equivalent, you know, what am I trying to
8 explain -- someone who was involved in the crime as well who
9 had already been convicted who came in and was testifying.

10 MS. RADOSTA: Okay.

11 PROSPECTIVE JUROR NO. 190: And then that ended the
12 day and we were told to come the next day. The next day we
13 came in and we were waiting outside and some long period of
14 time, I think it's been 20 years, I don't remember how long,
15 we were called back in and told that the trial was over, some
16 kind of bargain had been made.

17 MS. RADOSTA: Okay.

18 PROSPECTIVE JUROR NO. 190: And I think there was
19 some explanation about one of the witnesses never showed up
20 and --

21 MS. RADOSTA: Okay.

22 PROSPECTIVE JUROR NO. 190: -- right.

23 MS. RADOSTA: All right.

24 PROSPECTIVE JUROR NO. 190: It's been a long time,
25 right.

1 MS. RADOSTA: I understand. Did you -- do you
2 recall if you felt disappointed that you weren't going to be
3 able to finish the job that you had been -- that you'd signed
4 up to start?

5 PROSPECTIVE JUROR NO. 190: Oh, a little bit.

6 MS. RADOSTA: Okay.

7 PROSPECTIVE JUROR NO. 190: Yeah, I mean, it was --
8 it was --

9 MS. RADOSTA: I mean --

10 PROSPECTIVE JUROR NO. 190: -- going to be a very
11 short trial so it was -- it's not like --

12 MS. RADOSTA: How --

13 PROSPECTIVE JUROR NO. 190: -- you know, I'm not --
14 I'm not saying I wouldn't -- I would be -- you know, what I
15 mean.

16 MS. RADOSTA: How long was jury selection in that
17 one?

18 PROSPECTIVE JUROR NO. 190: An hour or two, I think,
19 at best.

20 MS. RADOSTA: And then witnesses in the afternoon?

21 PROSPECTIVE JUROR NO. 190: Yeah, it -- it was -- it
22 was very different.

23 MS. RADOSTA: Um, in that particular case, if -- if
24 you recall --

25 PROSPECTIVE JUROR NO. 190: Um-hum.

1 MS. RADOSTA: -- were the -- was it more than one
2 charge that the person was facing?
3 PROSPECTIVE JUROR NO. 190: I don't remember.
4 MS. RADOSTA: Okay.
5 PROSPECTIVE JUROR NO. 190: It was some kind of a
6 robbery or theft and I don't know whether it was one charge or
7 multiple.
8 MS. RADOSTA: Okay. If you -- I mean, I think from
9 the synopsis and -- put forth in the Jury Questionnaire, I
10 think you've maybe came to the conclusion that this is more
11 than one count in this particular --
12 PROSPECTIVE JUROR NO. 190: Well, they --
13 MS. RADOSTA: -- case.
14 PROSPECTIVE JUROR NO. 190: -- were read at the
15 beginning so --
16 MS. RADOSTA: Yeah.
17 PROSPECTIVE JUROR NO. 190: -- it was a long list,
18 yes.
19 MS. RADOSTA: Okay. And the fact that there are --
20 there are many charges in this --
21 PROSPECTIVE JUROR NO. 190: Right.
22 MS. RADOSTA: -- particular case, does that leave
23 any impression in your mind as to the strength or weakness of
24 the State's case?
25 PROSPECTIVE JUROR NO. 190: In my mind, I mean, I'm

1 assuming it's -- in their mind it is, but I don't have any
2 evidence yet so I can't make that determination.

3 MS. RADOSTA: Okay.

4 PROSPECTIVE JUROR NO. 190: In my mind, it would
5 mean that whatever happened, or whoever was involved, it --
6 from the sounds of it, I mean, I -- it's hard to explain. I
7 like -- I certainly don't have any clue one way or the other
8 whether there's innocence or guilt at this point.

9 MS. RADOSTA: Okay. And the fact that it could be
10 one count or ten counts or 20 or more than --

11 PROSPECTIVE JUROR NO. 190: Right.

12 MS. RADOSTA: -- that.

13 PROSPECTIVE JUROR NO. 190: Right.

14 MS. RADOSTA: That -- that -- am I correct -- and
15 correct me if I'm wrong; that is not going to influence you in
16 listening to the quality of the evidence?

17 PROSPECTIVE JUROR NO. 190: No.

18 MS. RADOSTA: You're still prepared to withhold your
19 decision until all the evidence has been --

20 PROSPECTIVE JUROR NO. 190: Absolutely.

21 MS. RADOSTA: Okay. Now, you did indicate, I
22 believe, on your -- and I just need to touch on this -- on
23 your Jury Questionnaire to the question about the -- the
24 graphic nature of the videotapes. You -- the question being,
25 can you promise to remain fair and impartial and objectively

1 evaluate all the evidence.

2 Your answer was, I believe so.

3 PROSPECTIVE JUROR NO. 190: And it's just -- it's
4 just the disturbing nature. I'm -- I think I can.

5 MS. RADOSTA: Okay.

6 PROSPECTIVE JUROR NO. 190: I just -- it's hard not
7 knowing how -- as people have said, the graphic nature of the
8 videos, I don't think they couldn't -- I don't know how
9 graphic they are but it's hard to not have an affect, but I
10 would -- I would think that wouldn't affect my ability to
11 evaluate them.

12 MS. RADOSTA: And I don't think anybody here is
13 asking you to be unemotional or --

14 PROSPECTIVE JUROR NO. 190: Right.

15 MS. RADOSTA: -- stoic. It's just are you able to
16 watch something, whether it be a video, or maybe a witness
17 testifying who's -- who's struggling through their
18 testimony --

19 PROSPECTIVE JUROR NO. 190: Right.

20 MS. RADOSTA: -- and then still say, well, you know
21 what though, they're -- the State still has to prove the case
22 beyond a reasonable doubt.

23 PROSPECTIVE JUROR NO. 190: Yeah. Absolutely, yes.

24 MS. RADOSTA: All right. Thank you --

25 PROSPECTIVE JUROR NO. 190: Um-hum.

1 MS. RADOSTA: -- Mr. Wohletz.
2 PROSPECTIVE JUROR NO. 190: Yes. That was exactly
3 right.
4 MS. RADOSTA: All right. Thank you. I won't ask
5 you to try to pronounce mine.
6 Let's see here, Mr. -- Mr. Gall, I had a few
7 questions for Mr. Gall, Badge 180.
8 So you -- I -- you said you had -- you -- did you
9 work out at the test site?
10 PROSPECTIVE JUROR NO. 180: I currently work there,
11 yes.
12 MS. RADOSTA: All right. So is that where you
13 literally -- do you drive out there every day or we've heard
14 -- I've heard rumors of a plane that goes out there every day.
15 PROSPECTIVE JUROR NO. 180: I don't get a plane, no.
16 MS. RADOSTA: You don't get the plane? But some
17 people do get the plane?
18 PROSPECTIVE JUROR NO. 180: They're not me.
19 MS. RADOSTA: Okay. So -- and you have a Ph.D. in
20 electrical engineering so obviously very science based
21 background.
22 PROSPECTIVE JUROR NO. 180: Yes.
23 MS. RADOSTA: Were your undergraduate degrees in
24 similar --
25 PROSPECTIVE JUROR NO. 180: Yeah, all -- everything

1 was in electrical engineering.

2 MS. RADOSTA: Everything was in electrical
3 engineering. Okay. Do you feel that you have -- I'm guessing
4 this is a silly question -- an analytical mind?

5 PROSPECTIVE JUROR NO. 180: I believe so.

6 MS. RADOSTA: Okay. So are you comfortable if we
7 are saying, you know what, there are certain counts where this
8 is -- this is what you need to pay attention to and certain
9 other counts where this is what you need to pay attention to;
10 would you be comfortable kind of using some evidence for
11 certain charges and other evidence for other charges?

12 I'm not -- that was not a good question. I'm sorry.
13 I did not -- that was not -- I was not doing my job well in
14 that particular question. Let me try again.

15 If the -- well, let me phrase it to you this way.
16 There are -- you've read the jury -- the synopsis, obviously.

17 PROSPECTIVE JUROR NO. 180: Yes.

18 MS. RADOSTA: And the State listed various people,
19 family members that potentially are going to come in here and
20 testify. And there are going to be certain charges that apply
21 to certain people and certain other charges that apply to
22 others.

23 And if we say, here's the evidence for juror -- or
24 witness number one and here's the evidence for witness number
25 two, are you going to be able to just look at the charges for

1 the -- the one witness and then move on and go to the second
2 witness?

3 MR. SWEETIN: Judge, can we approach very quickly?

4 THE COURT: Sure.

5 (Off-record bench conference)

6 MS. RADOSTA: Okay, Mr. Gall. I'm going to just
7 touch on something that we have -- that I've asked a few other
8 people, having the analytical mind, that you worked so hard
9 for.

10 There is going to be emotional testimony in this
11 particular case. There's no doubt about that, there's going
12 to be potentially emotional videos being shown during the
13 course of this case.

14 Do you think that that is going to in any way affect
15 you to hear somebody tell an emotional story?

16 PROSPECTIVE JUROR NO. 180: Do you mean, will it
17 affect my state of mind or my impartiality?

18 MS. RADOSTA: First and foremost, your state of
19 mind.

20 PROSPECTIVE JUROR NO. 180: I mean, I'm sure it
21 could.

22 MS. RADOSTA: Okay.

23 PROSPECTIVE JUROR NO. 180: I'm not going to say
24 "yes" or "no". But it's certainly possible.

25 MS. RADOSTA: Have -- have your emotions ever snuck

1 up on you when something you didn't think would affect you,
2 then you're all of a sudden crying at the -- at the silly
3 commercial on T.V., and you're like, where did that come from?

4 PROSPECTIVE JUROR NO. 180: Yeah, you know, I can
5 get emotional if, I mean, Toy Story 3 is a pretty sad movie.
6 I don't know if anyone made it through that without crying.
7 But --

8 MS. RADOSTA: UP was the one for me.

9 PROSPECTIVE JUROR NO. 180: Yeah, so --

10 MS. RADOSTA: That was the one for me.

11 PROSPECTIVE JUROR NO. 180: So yeah, I mean, I -- I
12 can be affected by things like that.

13 MS. RADOSTA: Okay. But do you think that you will
14 be able to -- because you -- you drew the distinction yourself
15 very well. Do you think you will be able to put it in a
16 pocket, if you will, and not let it affect your impartiality?

17 PROSPECTIVE JUROR NO. 180: Right. Yeah. My
18 impartiality will not be affected by -- by that.

19 MS. RADOSTA: Okay. If you were to be selected to
20 be a juror on this particular case and you go back into the
21 jury room, and somebody is in the back and they're just like
22 -- they're just all about their emotions and not really
23 analyzing the evidence, would you feel comfortable calling
24 them out on that and saying, no, no, no, that's not our job
25 here.

1 PROSPECTIVE JUROR NO. 180: I would.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 180: Yes. I mean, maybe take
4 a break or talk through it. But yeah, I mean --

5 MS. RADOSTA: Sure.

6 MS. RADOSTA: -- everyone needs to be focused on the
7 problem at hand which is to address the -- the nature and the,
8 you know, objective facts of what we're, you know, being
9 shown.

10 MS. RADOSTA: Okay. All right. Thank you.

11 PROSPECTIVE JUROR NO. 180: Yes.

12 MS. RADOSTA: Let me see, Mr. -- Mr. Fragale?

13 PROSPECTIVE JUROR NO. 561: Yes.

14 MS. RADOSTA: Just quickly. I don't have -- I don't
15 have as much for you because you sat down this morning and so
16 I need to look back at my notes.

17 So you -- okay, so you indicated that you like to
18 watch the true life forensic shows?

19 PROSPECTIVE JUROR NO. 561: Yes.

20 MS. RADOSTA: Are you -- what -- what about them do
21 you like?

22 PROSPECTIVE JUROR NO. 561: It's just that I think
23 it just takes a little piece of evidence and put something
24 together and all of a sudden you've got a -- they've got a
25 suspect and an arrest. That's -- it's just how, you know,

1 like one little -- one little hair could -- can define who --
2 who someone is.

3 MS. RADOSTA: Okay. Do you appreciate that in a lot
4 of cases that there is no physical evidence at all, there is
5 no hair or DNA or blood evidence?

6 PROSPECTIVE JUROR NO. 561: Yeah. I guess, yeah.

7 MS. RADOSTA: In some -- in some criminal cases?

8 PROSPECTIVE JUROR NO. 561: Yes.

9 MS. RADOSTA: It's just going to be testimony?

10 PROSPECTIVE JUROR NO. 561: Yes.

11 MS. RADOSTA: Or just going to be there could be, in
12 this particular case, we've talked a lot about the videos.

13 PROSPECTIVE JUROR NO. 561: Um-hum.

14 MS. RADOSTA: But beyond that, there may not be
15 anything such as DNA.

16 PROSPECTIVE JUROR NO. 561: Yeah, I can understand
17 that. Yeah.

18 MS. RADOSTA: Do you -- would it -- well, let me ask
19 you this; how would you evaluate somebody's testimony if they
20 come into court and you've never met them before? I've asked
21 this question to a bunch of people, so.

22 PROSPECTIVE JUROR NO. 561: Yeah. I guess that's
23 tough. You'd just have to -- have to see how sincere they
24 are, how consistent their testimony is of -- I'm sure's a
25 deposition somewhere that you can refer to.

1 MS. RADOSTA: Okay. So consistency between prior
2 statements or prior testimonies would be important to you?
3 PROSPECTIVE JUROR NO. 561: Yes.
4 MS. RADOSTA: And if they -- if their prior
5 testimony did not match up would that also be important to
6 you?
7 PROSPECTIVE JUROR NO. 561: Yeah, it could be. Yes.
8 MS. RADOSTA: Okay. The -- just the flip side of
9 that same point.
10 PROSPECTIVE JUROR NO. 561: Um-hum.
11 MS. RADOSTA: Do you -- can you see a situation
12 though where somebody's prior testimony may not match up with
13 what they say here today?
14 PROSPECTIVE JUROR NO. 561: Um --
15 MS. RADOSTA: Or tomorrow, or the next day?
16 PROSPECTIVE JUROR NO. 561: Yeah, I can see. It
17 depends on how long it's been since they've made the first
18 statement, how long it's been because you can't remember
19 everything -- everything word for word.
20 MS. RADOSTA: Would it make a difference as to what
21 specifically the -- the topic was of -- of the inconsistency
22 if there was one? In other words, is it something small, or
23 is it something big?
24 PROSPECTIVE JUROR NO. 561: Oh, yeah. Yeah, I guess
25 it would be, it would make a difference, yeah.

1 MS. RADOSTA: Okay. All right.
2 You also said that you like to watch like the
3 Netflix documentaries.
4 PROSPECTIVE JUROR NO. 561: Yes.
5 MS. RADOSTA: Were those specifically also crime
6 related that you were talking about?
7 PROSPECTIVE JUROR NO. 561: Yeah.
8 MS. RADOSTA: Like the -- the --
9 PROSPECTIVE JUROR NO. 561: The Making of a Murderer
10 is --
11 MS. RADOSTA: The Making of a Murderer --
12 PROSPECTIVE JUROR NO. 561: Yeah.
13 MS. RADOSTA: -- was the one that came to my mind as
14 well.
15 PROSPECTIVE JUROR NO. 561: Yeah.
16 MS. RADOSTA: Did you find that one interesting?
17 PROSPECTIVE JUROR NO. 561: Yes, very interesting.
18 MS. RADOSTA: Did you watch the follow up one as
19 well?
20 PROSPECTIVE JUROR NO. 561: I haven't watched the
21 follow up one yet, no.
22 MS. RADOSTA: Okay. Okay. Thank you.
23 PROSPECTIVE JUROR NO. 561: Thank you.
24 MS. RADOSTA: That's all -- that's all I have for
25 you.

1 Ms. Johnson, 396. Just given your -- the type of
2 books that you write --
3 PROSPECTIVE JUROR NO. 396: Um-hum.
4 MS. RADOSTA: -- you said -- I believe you said the
5 clean romance?
6 PROSPECTIVE JUROR NO. 396: Um-hum.
7 MS. RADOSTA: Do you think the topic of this
8 particular case is going to be something that's going to
9 bother you at all or is that just the area of -- of --
10 PROSPECTIVE JUROR NO. 396: That's the area --
11 MS. RADOSTA: -- fiction that you --
12 PROSPECTIVE JUROR NO. 396: -- I write.
13 MS. RADOSTA: Um-hum.
14 PROSPECTIVE JUROR NO. 396: I'm not 50 Shades of
15 Gray.
16 MS. RADOSTA: Yeah.
17 PROSPECTIVE JUROR NO. 396: I -- I have you know --
18 MS. RADOSTA: It's not for everybody, that's --
19 PROSPECTIVE JUROR NO. 396: Right.
20 MS. RADOSTA: -- for sure.
21 PROSPECTIVE JUROR NO. 396: So that's what I write,
22 yes.
23 MS. RADOSTA: Okay. Was it something -- did you
24 ever attempt to write another -- any other type of fiction
25 before you had success in this area?

1 PROSPECTIVE JUROR NO. 396: No, I'm religious --
2 MS. RADOSTA: Um-hum.
3 PROSPECTIVE JUROR NO. 396: -- and so my publisher
4 is LDS.
5 MS. RADOSTA: Okay.
6 PROSPECTIVE JUROR NO. 396: And so I have certain
7 stipulations. Like if I wrote for Hallmark, they have certain
8 guidelines.
9 MS. RADOSTA: Um-hum.
10 PROSPECTIVE JUROR NO. 396: And I really don't want
11 to be writing a different genre.
12 MS. RADOSTA: Okay.
13 PROSPECTIVE JUROR NO. 396: So that's where I fit
14 in.
15 MS. RADOSTA: Okay. So just for an example, if you
16 all of a sudden -- and I certainly don't wish this upon you --
17 but if all of a sudden you were no longer being published, if
18 your publisher said, I don't know what you used to have, but
19 you don't have it anymore; would you -- it sounds like you
20 wouldn't be inclined to try to change your style at all.
21 PROSPECTIVE JUROR NO. 396: No. There's a lot more
22 money in erotica.
23 MS. RADOSTA: Um-hum.
24 PROSPECTIVE JUROR NO. 396: But that's not something
25 I want to write.

1 MS. RADOSTA: Okay. Given -- given that and your
2 personal opinions of -- of what you choose to do with your
3 career --
4 PROSPECTIVE JUROR NO. 396: Yes.
5 MS. RADOSTA: -- do you think that the topic and the
6 discussion of sex which is going to happen during this trial
7 is going to be something that you're comfortable with?
8 PROSPECTIVE JUROR NO. 396: Yes, because sex
9 happens.
10 MS. RADOSTA: Okay.
11 PROSPECTIVE JUROR NO. 396: Yes. Yes.
12 MS. RADOSTA: Okay. What if it is, you know, I mean
13 you've read the synopsis. This is sex potentially you know
14 that was not consensual, potentially that was potentially
15 between family members, this is not, you know, something that
16 you normally would read about or write about or anything like
17 that. Is it something that you would be uncomfortable with?
18 PROSPECTIVE JUROR NO. 396: My impression is that no
19 one really wants to hear --
20 MS. RADOSTA: Fair enough.
21 PROSPECTIVE JUROR NO. 396: -- stories like this.
22 MS. RADOSTA: Um-hum.
23 PROSPECTIVE JUROR NO. 396: But yes, I can hear the
24 evidence and make decisions based on that.
25 MS. RADOSTA: Okay. You had answered some questions

1 yesterday, I believe, where you said -- there was some
2 questions from Ms. Sudano about if CPS didn't fully
3 investigate and -- the charge of abuse, would you hold it
4 against the child if CPS did not fully investigate, and your
5 response was, no, I'll hold it against the mother, I believe.
6 You had said something to that effect.

7 PROSPECTIVE JUROR NO. 396: No, I don't think I
8 would hold it against the mother.

9 MS. RADOSTA: Okay.

10 PROSPECTIVE JUROR NO. 396: I just think that if CPS
11 investigated maybe the child, maybe all the details, the whole
12 story isn't told --

13 MS. RADOSTA: Um-hum.

14 PROSPECTIVE JUROR NO. 396: -- because of fear or
15 they don't want to be taken out of their home, I wouldn't hold
16 it against the mom if CPS didn't get the whole story.

17 MS. RADOSTA: Okay. What if -- what if the mother
18 was questioned and had information and didn't necessarily
19 share it with CPS in an effort to protect somebody else?

20 PROSPECTIVE JUROR NO. 396: I don't think that is
21 right.

22 MS. RADOSTA: Okay. Do you think that it kind of
23 goes back the questions that I was asking some of the other
24 jurors earlier about as a parent, do you agree with the fact
25 that your primary role would -- is protecting your child?

1 PROSPECTIVE JUROR NO. 396: I do.

2 MS. RADOSTA: Even if the person potentially that's
3 hurting the child is somebody else in the family?

4 PROSPECTIVE JUROR NO. 396: Yes.

5 MS. RADOSTA: Okay. It's -- and so if CPS is
6 investigating a case and mom has information and doesn't fully
7 share it in an effort to protect some other family member, in
8 that situation would you hold it against the mother?

9 PROSPECTIVE JUROR NO. 396: I'm hesitating because
10 if she's not protecting her child over her own needs to -- if
11 it benefits her to protect someone else over protecting her
12 child --

13 MS. RADOSTA: Uh-huh.

14 PROSPECTIVE JUROR NO. 396: -- I don't think that's
15 correct.

16 MS. RADOSTA: Okay.

17 PROSPECTIVE JUROR NO. 396: I don't think that a
18 mother should do that.

19 MS. RADOSTA: Okay. Okay. Thank you. Okay. I
20 just want to make sure I didn't have anything else for you.

21 Now, you know, it's -- I'm sorry, I -- I heard you
22 the other day when you were saying, I'm the child -- I'm the
23 child taxi driver but I didn't see your face when you were
24 saying that, and the description of that just made me laugh.
25 I'm just the taxi driver.

1 PROSPECTIVE JUROR NO. 396: I am.

2 MS. RADOSTA: Thank you. Thank you, Ms. Johnson. I
3 appreciate all the information.

4 If you could just give the mic to Mr. Riggins.

5 So you've given us a lot of information about your
6 family over the past couple of days.

7 PROSPECTIVE JUROR NO. 394: Yes.

8 MS. RADOSTA: And one of the things that I was
9 curious about is you said that -- and I apologize that I don't
10 remember the time frame exactly -- but your niece confided in
11 you about something that was happening to her in her home.

12 PROSPECTIVE JUROR NO. 394: Yes, it was about -- I
13 think about a year-and-a-half ago, it may have been just a
14 month or two more than that.

15 MS. RADOSTA: Okay. So how -- and how old is your
16 niece?

17 PROSPECTIVE JUROR NO. 394: She'll be 16 come this
18 March.

19 MS. RADOSTA: Okay. And when she confided in you,
20 did you understand it to be a situation that was currently
21 happening to her or something that had --

22 PROSPECTIVE JUROR NO. 394: It had happened a few
23 months prior.

24 MS. RADOSTA: Okay. Was she still --

25 PROSPECTIVE JUROR NO. 394: It was some holiday

1 event at my cousin's house. It happened in his basement.

2 MS. RADOSTA: Okay. So was it a situation where you

3 felt that she could still be in -- still be in harm's way when

4 she was confiding in you?

5 PROSPECTIVE JUROR NO. 394: Potentially.

6 MS. RADOSTA: Okay.

7 PROSPECTIVE JUROR NO. 394: Yes.

8 MS. RADOSTA: Did she ask you to keep the

9 confidence? Did she say, I need to tell you something but I

10 don't want you to tell anyone else?

11 PROSPECTIVE JUROR NO. 394: I believe she did.

12 MS. RADOSTA: Okay. And are you particularly close

13 with this niece?

14 PROSPECTIVE JUROR NO. 394: Yes.

15 MS. RADOSTA: Okay. So this was not for --

16 PROSPECTIVE JUROR NO. 394: She's the -- one of my

17 -- I have two nieces and a nephew that I actually get along

18 with.

19 MS. RADOSTA: Okay.

20 PROSPECTIVE JUROR NO. 394: The other two, say rude

21 things to me.

22 MS. RADOSTA: Okay. Well, I --

23 PROSPECTIVE JUROR NO. 394: So --

24 MS. RADOSTA: -- I'm sorry to hear that. That's

25 unfortunate. It's particularly when it's family and sadly

1 when it's children.

2 PROSPECTIVE JUROR NO. 394: Well, one's a 13-year
3 old girl and then ten-year old boys.

4 MS. RADOSTA: Okay. So -- so this niece, you're
5 lucky enough to be close with her.

6 So -- so this niece, you're lucky enough to be close
7 with her.

8 PROSPECTIVE JUROR NO. 394: Um-hum.

9 MS. RADOSTA: Is -- is she -- do you have like daily
10 contact, weekly contact with her, or at the time?

11 PROSPECTIVE JUROR NO. 394: I would say at least
12 every two weeks.

13 MS. RADOSTA: Okay. And --

14 PROSPECTIVE JUROR NO. 394: We may like send a
15 Snapchat back and forth, but it's not like a direct
16 conversation. It's just like a picture or something, have a
17 good day, type of -- so.

18 MS. RADOSTA: Okay. So did she pull you aside to
19 ask you -- or to confide in you?

20 PROSPECTIVE JUROR NO. 394: No, she lives in Utah.
21 She told me over the phone.

22 MS. RADOSTA: Okay. And after she confided in you,
23 did you struggle with the decision to break the confident?

24 PROSPECTIVE JUROR NO. 394: I'd say within a few
25 hours or by the next day is when I had -- I told my aunt --

1 MS. RADOSTA: Okay.

2 PROSPECTIVE JUROR NO. 394: -- who is close with my
3 sister, my niece's mom. And she then in turn told my sister.
4 Because I more so like it's -- I would have -- it would have
5 eaten me up worse to not say anything, because whether or not
6 it was true, I felt it was my responsibility to bring it to
7 light.

8 MS. RADOSTA: Okay. So there was, at least in your
9 mind, you weren't 100 percent sure if she was telling you the
10 truth but you needed to error on the side of caution?

11 PROSPECTIVE JUROR NO. 394: Yes.

12 MS. RADOSTA: Because if it had been true and you
13 hadn't said anything, you -- and something else happened --

14 PROSPECTIVE JUROR NO. 394: And then it could happen
15 to other family members or he could do it to other -- other
16 girls, yeah.

17 MS. RADOSTA: Did your niece, was she upset with you
18 for -- for breaking the confidence?

19 PROSPECTIVE JUROR NO. 394: Oh, yes. At first, yes.

20 MS. RADOSTA: Okay. Did she ultimately understand
21 why you made that decision?

22 PROSPECTIVE JUROR NO. 394: Yeah, I talked with her
23 about that.

24 MS. RADOSTA: Okay.

25 PROSPECTIVE JUROR NO. 394: I know she had to, while

1 she was going through court, she had to go through counseling
2 and stuff like that and I told her that basically I did it
3 because I love you and I want to protect you. You shouldn't
4 be subjected to that and I wanted you to be able to get
5 counseling because people that go through stuff don't always
6 get counseling.

7 Like for instance, when I've been raped, I never
8 went through counseling after that --

9 MS. RADOSTA: Right.

10 PROSPECTIVE JUROR NO. 394: -- and I guess at times,
11 I -- like I've tried to put it -- I like put it past me and
12 there were a few events where I know that it affected me like
13 I heard he'd gone to jail, but then when I heard he was
14 getting out, for some reason I had this fear in me that he
15 might come after me, even though I never said anything.

16 MS. RADOSTA: Okay.

17 PROSPECTIVE JUROR NO. 394: But yeah, I just wanted
18 to let her know that I loved her and I wanted to make sure
19 that it didn't continue with anyone else, and that they got to
20 the bottom of it and found the truth in it.

21 MS. RADOSTA: Okay. After she confided in you, but
22 before you talked to your aunt, during that conversation did
23 you encourage her to tell her mom?

24 PROSPECTIVE JUROR NO. 394: I -- I asked her, I
25 said, why haven't you told your mom? And she's like, I -- I

1 don't want her to know, no.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 394: I don't want her to
4 know. So --

5 MS. RADOSTA: All right.

6 PROSPECTIVE JUROR NO. 394: Yeah.

7 MS. RADOSTA: And you also mentioned yesterday about
8 a sister who you don't have the best closest relationship with
9 because you say she's acting -- you've shared stories about
10 your mom when you were younger and you said you have one
11 sister that's acting just like your mom.

12 PROSPECTIVE JUROR NO. 394: Yeah. It's not
13 necessarily that I'm not close to her, it just I see
14 characteristics in her that she does act like my mom. I still
15 love her to death. I mean, I spoke --

16 MS. RADOSTA: Okay.

17 PROSPECTIVE JUROR NO. 394: -- with her last night.

18 MS. RADOSTA: Okay.

19 PROSPECTIVE JUROR NO. 394: Yeah.

20 MS. RADOSTA: My apologies for misinterpreting that.
21 Is that sister the mother of the niece?

22 PROSPECTIVE JUROR NO. 394: Yes.

23 MS. RADOSTA: Okay. So it wasn't necessarily that
24 you didn't have a good relationship with that sister, that you
25 went through another family member, you just chose to go to

1 your aunt before --

2 PROSPECTIVE JUROR NO. 394: I talked with my aunt
3 and we -- in our family we're known to talk a lot if you
4 haven't already noticed, by characteristics.

5 All the women in my family including myself we just
6 -- we just have the gift of gab.

7 MS. RADOSTA: Okay.

8 PROSPECTIVE JUROR NO. 394: So much more cursed, I
9 guess. But yeah, so I -- my aunt just happened to be, I
10 think, the first person I spoke to and I kind of brought it up
11 a little bit and then decided to tell her.

12 MS. RADOSTA: Okay. And ultimately, was there any -
13 - did it go any further than that? Was the cousin ever
14 charged with anything?

15 PROSPECTIVE JUROR NO. 394: Yes. I know he had
16 probation and he had to do some sort of psychiatric like
17 counseling --

18 MS. RADOSTA: Okay.

19 PROSPECTIVE JUROR NO. 394: -- for it, yeah. And
20 then I had heard that there was some other girl that was non-
21 related to him that he had supposedly done stuff to as well,
22 so I don't know if that had ever got charges, but all -- they
23 all I've in Salt Lake County so.

24 MS. RADOSTA: Okay.

25 PROSPECTIVE JUROR NO. 394: All the family that I

1 had spoken to about it and the victims involved, so --

2 MS. RADOSTA: All right.

3 PROSPECTIVE JUROR NO. 394: -- and my --

4 MS. RADOSTA: Okay.

5 PROSPECTIVE JUROR NO. 394: -- cousin that was the

6 perpetrator.

7 MS. RADOSTA: So the -- the cousin was -- this is

8 the juvenile --

9 PROSPECTIVE JUROR NO. 394: Yes.

10 MS. RADOSTA: -- at the time? Okay.

11 PROSPECTIVE JUROR NO. 394: I think he's like 17

12 now.

13 MS. RADOSTA: Okay. The only other question that I

14 -- well, actually, I have one or two more for you. You --

15 you -- you had indicated on your Jury Questionnaire that --

16 and I don't think you shared this in court, so I apologize if

17 you didn't feel comfortable talking about this in --

18 PROSPECTIVE JUROR NO. 394: The grandfather?

19 MS. RADOSTA: -- open court. You said your father's

20 stepfather.

21 PROSPECTIVE JUROR NO. 394: Yes. My grandmother, my

22 dad's mom, when she remarried, she remarried a guy named

23 Robert. I don't -- I don't know his last name.

24 MS. RADOSTA: Um-hum.

25 PROSPECTIVE JUROR NO. 394: I called him Bob.

1 MS. RADOSTA: Okay.

2 PROSPECTIVE JUROR NO. 394: He ended up -- I know he
3 died in prison.

4 MS. RADOSTA: Okay.

5 PROSPECTIVE JUROR NO. 394: So he was convicted. I
6 don't know if it was for those charges or others. But I had
7 heard that he molested all of his stepchildren and a lot of my
8 cousins, which were his grandchildren, I was born after he was
9 already in prison.

10 MS. RADOSTA: Okay. So this is your -- and this was
11 the part that I was just slightly --

12 PROSPECTIVE JUROR NO. 394: Most of my cousins are
13 like ten years older --

14 MS. RADOSTA: Okay.

15 PROSPECTIVE JUROR NO. 394: -- so -- than me.

16 MS. RADOSTA: But you had said that this is your
17 father's stepfather and that he molested all of his
18 stepchildren. Was your father one of the victims?

19 PROSPECTIVE JUROR NO. 394: From what I've heard,
20 yes. But it's never something my father's confided me in or
21 mentioned to me about.

22 MS. RADOSTA: Okay. Okay. And you have never felt
23 comfortable asking him if he doesn't?

24 PROSPECTIVE JUROR NO. 394: No, I didn't really want
25 to pry into the issue.

1 MS. RADOSTA: Okay.

2 PROSPECTIVE JUROR NO. 394: But it did have after
3 effects between my cousins and then allegations from my
4 cousins touching their sister, and things like that.

5 MS. RADOSTA: Okay. All right. The -- the only --
6 and I need to just go back a second to the issue with your
7 niece.

8 PROSPECTIVE JUROR NO. 394: Um-hum.

9 MS. RADOSTA: There was a court case but you were
10 not -- you didn't participate at all --

11 PROSPECTIVE JUROR NO. 394: No, I was here --

12 MS. RADOSTA: -- in the process?

13 PROSPECTIVE JUROR NO. 394: -- in Nevada, the court
14 case was in Utah.

15 MS. RADOSTA: Was there ever any reach out to you as
16 you were the first person that she told that -- that you
17 needed to be part of the process, or not?

18 PROSPECTIVE JUROR NO. 394: You mean by the courts
19 or --

20 MS. RADOSTA: Yeah.

21 PROSPECTIVE JUROR NO. 394: -- attorneys? No.

22 MS. RADOSTA: Or the attorney -- okay. Okay. I
23 think that's all I have for you, Mr. Riggins.

24 PROSPECTIVE JUROR NO. 394: Okay.

25 MS. RADOSTA: Judge, could we approach for just a

1 quick second?

2 THE COURT: Sure.

3 (Off-record bench conference)

4 MS. RADOSTA: I'm going to now -- I might come back
5 to a few of you individually, but I am going to try to just
6 open it up to the panel at this point for some other
7 questions. I've touched on some of these topics already so
8 I'll try to remember that.

9 Obviously, this case -- there's some allegations of
10 abuse. And the idea that -- well, let me ask you this; does
11 anybody -- or who here agrees with the fact that men and women
12 can be abusers; everybody? A show of hands with everybody for
13 the "I believe" everybody.

14 Let me just ask it another way; is there anybody
15 that doesn't agree with that particular statement? No hands
16 are showing.

17 Now, my guess is though most people when they hear
18 allegations of this sort, probably their head naturally goes
19 to probably -- probably going to be a man; is that a fair
20 statement? Probably going to be a man who is the -- the
21 defendant. Is that -- I see Mr. -- Mr. Tonan, 479, nodding
22 you head.

23 That's -- if you hear a story on the news and you
24 don't know the gender of the person but you hear allegations
25 of this sort, fair to say that you think naturally it's

1 probably going to be a -- a male that's accused of that?

2 But there are cases -- I -- would you agree, of
3 where the woman is the -- is the person accused?

4 UNIDENTIFIED SPEAKER: Yes.

5 MS. RADOSTA: We hear about every now and then the
6 -- the one that comes -- the ones that come to mind to me are
7 like school teacher cases.

8 UNIDENTIFIED SPEAKER: Yeah.

9 MS. RADOSTA: Yeah. And Mr. Riggins is also
10 agreeing with that, Juror 394.

11 So but when we start to get into a little bit more
12 than that, and it's within the family, and you hear that it's
13 a family situation, I know some of you on your Jury
14 Questionnaire said, I have a problem with this type of a case
15 because I have daughters, and you think naturally that the
16 alleged victims are going to be female.

17 And that naturally the person accused is the man.
18 Is there anybody out here that thinks that it's possible for a
19 mother to be the sexual abuser in the -- in the home?

20 Okay. I have some people shaking their head. I am
21 seeing Ms. Sanchez, who's been very quiet, so -- and I -- I -
22 - I am going to try to talk to a few people who haven't said
23 too much.

24 Ms. Sanchez, you didn't really respond to that, the
25 fact that a woman could be a sexual abuse?

1 PROSPECTIVE JUROR NO. 120: Yeah, I agree.

2 MS. RADOSTA: You do agree that that's something,
3 even if -- if to take it a step further and it's the mother,
4 or a stepmother in the home; is that something that you can
5 see potentially as a -- as a possibility?

6 PROSPECTIVE JUROR NO. 120: Yes. Yeah.

7 MS. RADOSTA: Okay. Thank you.

8 Is there anybody that would be -- that -- is there
9 anybody here that would -- I'm trying to phrase the question
10 in a different way, so I apologize for my stiltedness.

11 Everybody agrees with the idea that people are
12 responsible for their own behavior; is that a fair statement?

13 UNIDENTIFIED SPEAKER: Yeah.

14 MS. RADOSTA: I see Mr. Faller shaking his head, I
15 see Mr. Rosenfield shaking -- everybody shaking their head.
16 People are responsible for their own behavior. And I think
17 the idea that I believe it was Ms. -- it was Ms. Ruelas --
18 Ruelas -- that said earlier that her brother's ex-girlfriend
19 was quote/unquote "playing the victim card". Has anybody ever
20 heard that particular phrase before, "playing the victim
21 card"?

22 A lot of people are nodding their heads.

23 Mr. -- Mr. Kittredge, what does "playing the victim
24 card" mean to you?

25 PROSPECTIVE JUROR NO. 572: Well, I mean -- it could

1 mean a lot of things, so --

2 THE COURT RECORDER: I need a mic.

3 MS. RADOSTA: Oh, I am sorry. My apologies.

4 THE COURT: Mr. Rosenfield, right behind you, just

5 pass it behind you. Okay.

6 MS. RADOSTA: And, I'm sorry, Mr. Kittredge, Badge

7 572.

8 PROSPECTIVE JUROR NO. 572: So playing the victim

9 card; I don't know, somebody could be doing it out of

10 attention --

11 MS. RADOSTA: Um-hum.

12 PROSPECTIVE JUROR NO. 572: -- and so maybe they're

13 just fabricating something or maybe something did occur but

14 they're -- they just keep bringing it up for whatever sympathy

15 reasons they may be trying to attract from other people.

16 MS. RADOSTA: Okay.

17 PROSPECTIVE JUROR NO. 572: I mean, that -- that can

18 be an instance.

19 MS. RADOSTA: Does it -- does it paint in your

20 picture of somebody who is actually a victim or not actually a

21 victim?

22 PROSPECTIVE JUROR NO. 572: No, no, if -- if

23 somebody -- well, again, you could take it back. So to answer

24 your question, that -- it could be used that way, too.

25 MS. RADOSTA: Okay.

1 PROSPECTIVE JUROR NO. 572: In all fairness.
2 MS. RADOSTA: Um-hum.
3 PROSPECTIVE JUROR NO. 572: Even if something, you
4 know, horrific happened to somebody, I mean, granted, it's --
5 it's horrific. I'm sure a lot of people don't want to hear
6 about it, but if they keep bringing it up time after time
7 after time, maybe that term can be thrown around that way,
8 too.
9 MS. RADOSTA: Okay.
10 PROSPECTIVE JUROR NO. 572: Not to be --
11 MS. RADOSTA: All right.
12 PROSPECTIVE JUROR NO. 572: -- mean or anything, but
13 that's -- that's a true assessment --
14 MS. RADOSTA: Okay.
15 PROSPECTIVE JUROR NO. 572: -- on my part.
16 MS. RADOSTA: All right. Mr. Albright, do you have
17 you ever heard the term, Badge 375, have you ever heard the
18 term or the phrase "playing the victim card"?
19 PROSPECTIVE JUROR NO. 375: Yeah, I've heard the
20 term before.
21 MS. RADOSTA: Okay. Have you ever used it in
22 reference to anybody that you know?
23 PROSPECTIVE JUROR NO. 375: Not that I can think of.
24 MS. RADOSTA: Okay. Is it -- does it give you a
25 positive or a negative idea in your head?

1 PROSPECTIVE JUROR NO. 375: Honestly, kind --
2 MS. RADOSTA: Or --
3 PROSPECTIVE JUROR NO. 375: -- of negative.
4 MS. RADOSTA: -- kind of negative?
5 PROSPECTIVE JUROR NO. 375: Yeah.
6 MS. RADOSTA: Okay. In what sense?
7 PROSPECTIVE JUROR NO. 375: It's almost like in my
8 interpretation of "playing the victim card" it's either
9 overreacting or over -- basically overplaying what's happened,
10 what happened to you, trying to get more out of it, trying to
11 push the situation farther, or it's making something up to
12 better yourself.
13 MS. RADOSTA: Okay. And do you think that it is --
14 why do you -- do think there could be a reason why somebody
15 would, quote/unquote, "play the victim card"?
16 PROSPECTIVE JUROR NO. 375: Hatred towards another
17 person or just for attention, anything along those lines.
18 MS. RADOSTA: Okay. Could it be also maybe to make
19 themselves look better?
20 PROSPECTIVE JUROR NO. 375: Yeah.
21 MS. RADOSTA: Okay. Put themselves --
22 PROSPECTIVE JUROR NO. 375: For self -- personal
23 gain.
24 MS. RADOSTA: -- in a better light?
25 PROSPECTIVE JUROR NO. 375: Yeah.

1 MS. RADOSTA: Okay. Mr. Powers, Badge 514.
2 PROSPECTIVE JUROR NO. 519: 519.
3 MS. RADOSTA: 519? Sorry, I wrote it down
4 incorrectly. I got your last name right though.
5 PROSPECTIVE JUROR NO. 519: Yeah.
6 MS. RADOSTA: The idea of playing the victim card;
7 have you ever heard it before?
8 PROSPECTIVE JUROR NO. 519: Yes.
9 MS. RADOSTA: Okay. Have you ever used it to
10 describe someone?
11 PROSPECTIVE JUROR NO. 519: Yes.
12 MS. RADOSTA: Okay. Was that in your experience did
13 you use it to describe somebody positively or negative or --
14 PROSPECTIVE JUROR NO. 519: Well, it was --
15 MS. RADOSTA: -- in between?
16 PROSPECTIVE JUROR NO. 519: -- more negative.
17 MS. RADOSTA: Okay. And the situation was -- if
18 you're comfortable sharing it -- was it something where they
19 were going to change the story of what happened or -- or make
20 up a story entirely or?
21 PROSPECTIVE JUROR NO. 519: Probably not hearing
22 both sides, believing -- having a hard time believing the
23 story.
24 MS. RADOSTA: Okay.
25 PROSPECTIVE JUROR NO. 519: As opposed to hearing

1 both sides and knowing.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 519: So playing the victim

4 card, you know.

5 MS. RADOSTA: Did you ever --

6 PROSPECTIVE JUROR NO. 519: Or want sympathy, you

7 know.

8 MS. RADOSTA: What about like what Mr. Kittredge

9 said that maybe telling the story over and over and over

10 again, to maybe draw attention to themselves --

11 PROSPECTIVE JUROR NO. 519: Yes.

12 MS. RADOSTA: Does that seem like a similar --

13 PROSPECTIVE JUROR NO. 519: Yes.

14 MS. RADOSTA: -- scenario? Okay.

15 Do you -- is there anybody here that would disagree

16 with the fact that -- that children -- and even teenagers --

17 don't necessarily take responsibility for the things that they

18 do, but sometimes they'll -- something will happen and they

19 will be like, oh, it wasn't me, it was my friend, something of

20 that nature.

21 Is that a fair statement? Mr. Riggins is -- is

22 nodding his head. Could you pass the mic to Mr. Riggins, down

23 here in the front row? If you nod your head, that's what

24 happens. Talk to Ms. Cornwell.

25 PROSPECTIVE JUROR NO. 245: Stop picking on Ms.

1 Cornwell.

2 MS. RADOSTA: Well, now you're just the example.

3 So the idea that -- that children and teenagers

4 don't necessarily always take responsibility for their own

5 actions.

6 PROSPECTIVE JUROR NO. 394: Um-hum.

7 MS. RADOSTA: Are you -- you can agree with that?

8 PROSPECTIVE JUROR NO. 394: Um-hum.

9 MS. RADOSTA: Have you had any personal experience

10 with that?

11 PROSPECTIVE JUROR NO. 394: Unfortunately.

12 MS. RADOSTA: Unfortunately? Do you think that

13 there are also adults that don't always take responsibility

14 for their own action?

15 PROSPECTIVE JUROR NO. 394: Absolutely.

16 MS. RADOSTA: And do you think that they could be --

17 do -- what are some reasons why you think an adult might not

18 take responsibility for their own actions?

19 PROSPECTIVE JUROR NO. 394: Um, maybe in their own

20 mind, to play a situation down, they don't really want to

21 believe they made a mistake, just move on, forget about it.

22 MS. RADOSTA: Okay. Minimize --

23 PROSPECTIVE JUROR NO. 394: Yeah.

24 MS. RADOSTA: -- their own involvement and -- and

25 try to make themselves look better?

1 PROSPECTIVE JUROR NO. 394: Absolutely.

2 MS. RADOSTA: Is that -- does that sound like -- am

3 I putting words in your mouth or is that what --

4 PROSPECTIVE JUROR NO. 394: The -- the --

5 MS. RADOSTA: -- you were saying?

6 PROSPECTIVE JUROR NO. 394: -- latter part,

7 absolutely, I agree with.

8 MS. RADOSTA: Trying to make themselves look better?

9 PROSPECTIVE JUROR NO. 394: Yeah.

10 MS. RADOSTA: Is there anybody else here that

11 disagrees with that idea, that some adults even can not take

12 responsibility for their own actions in an effort to make

13 themselves look better?

14 PROSPECTIVE JUROR NO. 394: Well, like for instance

15 if you make a mistake at work and you just ignore it so --

16 hoping no one notices --

17 MS. RADOSTA: Um-hum. And then if somebody does

18 notice, maybe say, that wasn't me or --

19 PROSPECTIVE JUROR NO. 394: I'm --

20 MS. RADOSTA: Um-hum.

21 PROSPECTIVE JUROR NO. 394: -- not that type of

22 person.

23 MS. RADOSTA: All right. Could you hand the mic to

24 Mr. Rosenfield for a second, Badge 256?

25 What was it that you just said?

1 PROSPECTIVE JUROR NO. 256: I said they dodge and
2 deflect.

3 MS. RADOSTA: Dodge and deflect, hoping that they're
4 not going to be held --

5 PROSPECTIVE JUROR NO. 256: Yeah.

6 MS. RADOSTA: -- responsible and then --

7 PROSPECTIVE JUROR NO. 256: Yeah, I worked with a
8 lady who made a career out of that.

9 MS. RADOSTA: Okay. Kind of -- kind of frustrating
10 at times?

11 PROSPECTIVE JUROR NO. 256: Oh, absolutely.

12 MS. RADOSTA: Okay. So -- sorry, as I said, I
13 talked about some of these topics with people already so I'm
14 just trying to make sure I'm not missing anything.

15 I did touch on with several people the idea -- and
16 I'm going to just open this up to the panel again -- that
17 parents, I think there is nobody here that wouldn't agree with
18 the -- with the statement that parents are supposed to protect
19 their children.

20 And I did also follow up with, is there ever -- is
21 -- can anybody here think of a situation where they could be
22 coerced into hurting their own child or a -- or a -- not
23 necessarily if you don't have children, a younger family
24 member? And the entire panel is shaking their head "no".

25 Mr. Rosenfield, I'm sorry, I apologize, I don't have

1 all my notes in front of you -- you -- do you have children?
2 PROSPECTIVE JUROR NO. 256: I do, yes.
3 MS. RADOSTA: Okay. Is there anything that you
4 could imagine that somebody could say to you, to get you to
5 hurt your child?
6 PROSPECTIVE JUROR NO. 256: I mean, it's a -- no, I
7 -- I mean, as -- you know, there's -- no.
8 MS. RADOSTA: Okay.
9 PROSPECTIVE JUROR NO. 256: No. There's the old
10 joke of, you know, when your baby's months of teething and or
11 the months of colicky or colicky and then teething --
12 MS. RADOSTA: Um-hum.
13 PROSPECTIVE JUROR NO. 256: -- and my wife and I
14 used to make jokes, you know, you'd throw yourself in front of
15 a bus in a blink of an eye at the same time you can see
16 yourself, you know, throwing them against the wall watching
17 them drop down.
18 MS. RADOSTA: Um-hum.
19 PROSPECTIVE JUROR NO. 256: You know, but no, no.
20 And, I mean, you'd give your life -- I mean, any -- any decent
21 parent it's kind of -- you know, you'd give your life in a
22 blink.
23 MS. RADOSTA: Okay. And I am assuming that everyone
24 here with children feels the same way? Okay. And the panel
25 is nodding universally.

1 Is there any -- Ms. Sudano touched on this yesterday
2 when she was asking some questions and said, you know, does
3 gender matter in -- in certain situations. Does your -- does
4 your -- and interpretation or opinion about things turn on the
5 fact of is a man doing it or a woman doing it.

6 And in this particular situation, could you imagine
7 if a -- if a -- I apologize, I'm trying to phrase my question
8 -- I'll come back to it in a second.

9 There has been some discussion among some people in
10 the courtroom about domestic violence situations and in the
11 home and as children.

12 Does anybody have an idea in their mind fo what a
13 abused spouse like the stereotype of a -- I hate using that
14 word -- the idea of an abused spouse, what they would be like?
15 Does anybody have a picture in their mind? No one is -- no
16 one is responding to that.

17 Is it --

18 MR. SWEETIN: Can we approach very quickly?

19 THE COURT: Sure.

20 (Off-record bench conference)

21 MS. RADOSTA: I'm sorry, Your Honor. Sorry, Your
22 Honor. If you can just give me a second to look at my notes
23 as well as the panel.

24 (Pause in the proceedings)

25 MS. RADOSTA: I'm not sure if we've ever really

1 touched on this before.

2 Has anyone here in the panel ever been falsely
3 accused, not necessarily of a crime, but falsely accused of
4 something at work that they didn't do or falsely accused by a
5 family member of something that they didn't do?

6 And Ms. Dolan, back in the back, 338, raised their
7 hand.

8 PROSPECTIVE JUROR NO. 338: Not anything major, I
9 don't feel like. But my ex-husband, the one who killed
10 himself --

11 MS. RADOSTA: Um-hum.

12 PROSPECTIVE JUROR NO. 338: -- he would always tend
13 to push any blame onto me for anything that he had done or any
14 problems he encountered, he would automatically blame me, not
15 just to me, but to our children as well.

16 MS. RADOSTA: Okay. And was there -- how did that
17 make you feel to be accused of something that you did not do?

18 PROSPECTIVE JUROR NO. 338: At the time, very
19 frustrated and upset.

20 MS. RADOSTA: Okay.

21 PROSPECTIVE JUROR NO. 338: And for awhile I took in
22 like must be something wrong with me. But now that I've had
23 space and time, I realize that -- that that was something that
24 he was burdened with and that's not on me.

25 MS. RADOSTA: Did your -- you said he brought your

1 children into it. Did they ever believe the things that he
2 had said, the false things he said about you?

3 PROSPECTIVE JUROR NO. 338: I suppose when they were
4 younger, but as time went on, they -- they -- they would come
5 and tell me because they -- they didn't believe him anymore.

6 MS. RADOSTA: Okay. And did -- did you ever feel
7 the need with your children to defend yourself against these
8 false accusations?

9 PROSPECTIVE JUROR NO. 338: I really didn't need to.
10 My children and I have always been very close and at the time
11 that he -- he killed himself they weren't even really talking
12 to him anymore. So I kind of didn't need to. They -- they --
13 they know me so well that they knew I wouldn't do anything.
14 But if they asked, I would tell them my point of view.

15 MS. RADOSTA: Okay. Did -- has anybody else had an
16 experience like that on the panel? Ms. Brand, Juror 111.

17 PROSPECTIVE JUROR NO. 111: Okay. This was a long
18 time ago. I was a kid, and I had a classmate that accused me
19 of stealing five dollars from her. I was probably in
20 elementary school, I think. And I did not steal the five
21 dollars.

22 And I was -- I remember I was very frustrated. I
23 went home and told my mother about it and we went over to the
24 house. And it turned out that I was in the room with a -- in
25 her bedroom and with the classmate there and she said, she

1 kept accusing me, I know you took it, I know you took it. And
2 then later then she said, well, I know you didn't take it.

3 So it was -- she -- they were going to move and
4 everything. I don't know whether she was trying to get my
5 friendship --

6 MS. RADOSTA: Um-hum.

7 PROSPECTIVE JUROR NO. 111: -- I don't know what --
8 what that was all about. But I just remember that I was, you
9 know, I had to defend myself and I was afraid that I wasn't
10 going to be believed and -- but then it just kind of -- just -
11 - it was, you know, she accepted that she -- she had lied.

12 MS. RADOSTA: Okay.

13 PROSPECTIVE JUROR NO. 111: So.

14 MS. RADOSTA: Did she make this accusation to
15 anybody other than you? Did she make it to adults --

16 PROSPECTIVE JUROR NO. 111: Um --

17 MS. RADOSTA: -- if you remember?

18 PROSPECTIVE JUROR NO. 111: -- oh, I think there
19 might have been my teacher at the time, and so that's why it
20 was kind of a big deal because, yeah.

21 MS. RADOSTA: Okay.

22 PROSPECTIVE JUROR NO. 111: So.

23 MS. RADOSTA: Do you remember -- and I certainly
24 appreciate that you said it was when you were in elementary
25 school.

1 PROSPECTIVE JUROR NO. 111: Yeah.

2 MS. RADOSTA: Do you remember feeling any
3 frustration and trying to prove that you did not do something?

4 PROSPECTIVE JUROR NO. 111: Well, sure.

5 MS. RADOSTA: How -- how did you go about trying to
6 prove that you did not do something?

7 PROSPECTIVE JUROR NO. 111: Well, just through my
8 verbal, you know, talk --

9 MS. RADOSTA: Okay.

10 PROSPECTIVE JUROR NO. 111: -- to my mother and, you
11 know, and going over there to her house and, you know, trying
12 to -- you know, I told her straight -- straight up to her
13 face, I didn't take that five dollars and I don't know why
14 you're lying --

15 MS. RADOSTA: Okay.

16 PROSPECTIVE JUROR NO. 111: -- about that, so.

17 MS. RADOSTA: Did she eventually come forward in
18 front of the adults or just to you to --

19 PROSPECTIVE JUROR NO. 111: I think --

20 MS. RADOSTA: -- admit that she had lied?

21 PROSPECTIVE JUROR NO. 111: I think that after -- I
22 think that I had told the adults that she said that I didn't
23 take it. So I think, you know, like when we left, everybody
24 was, you know, like smiling.

25 MS. RADOSTA: Okay.

1 PROSPECTIVE JUROR NO. 111: So, from what I
2 remember.

3 MS. RADOSTA: Did you ever feel that your parents
4 maybe believed her over you in the beginning when the
5 accusation was made?

6 PROSPECTIVE JUROR NO. 111: No, I think my mother
7 believed me, but she wanted to make sure that, you know, yeah
8 so.

9 MS. RADOSTA: Make -- at least give the girl a voice
10 or something of that --

11 PROSPECTIVE JUROR NO. 111: Right.

12 MS. RADOSTA: Okay. Okay. Is there anybody else
13 that had had an experience like that? Mr. --

14 PROSPECTIVE JUROR NO. 256: As a -- as an adult.

15 MS. RADOSTA: Hang on. Hang on a second. If we can
16 get the mic down to you.

17 Mr. Rosenfield, Badge 256. As an adult, yeah?

18 PROSPECTIVE JUROR NO. 256: As an adult, this was in
19 '88, I had just started my job in Las Vegas in -- in printing
20 sales --

21 MS. RADOSTA: Okay.

22 PROSPECTIVE JUROR NO. 256: -- and there was -- I
23 walked by the conference room and there was some film and we
24 were evidently printing a poster of a Waffen-SS soldier, kind
25 of Nazi memorabilia.

1 MS. RADOSTA: Um-hum.

2 PROSPECTIVE JUROR NO. 256: I was a little surprised
3 by that.

4 MS. RADOSTA: For sure.

5 PROSPECTIVE JUROR NO. 256: I took some issues with
6 that and went to my boss, asked him if -- if we were actually
7 going to print that job, and I said we have standards, don't
8 we? You know, we don't print porn.

9 MS. RADOSTA: Right.

10 PROSPECTIVE JUROR NO. 256: They said their -- they
11 noted my concerns and I think they said they would just print
12 it in the middle of the night or something like that, it would
13 be covered. And it was a boss -- it was one of the two
14 owner's accounts. He had the account.

15 About a couple weeks later, they went to -- I get
16 called into the office and the owner of the account, the owner
17 that account was ready to fire me he was so angry. And the
18 press room -- or the pre-press formen was in there saying that
19 he gave me that film, I went in there and checked out that
20 film. And they -- they didn't have the film. He said he gave
21 it to me.

22 MS. RADOSTA: Okay.

23 PROSPECTIVE JUROR NO. 256: And I did not -- and the
24 guy -- the pressroom formen, pre-press formen had been there
25 for a long time.

1 MS. RADOSTA: And you had just started.

2 PROSPECTIVE JUROR NO. 256: I had just started.

3 MS. RADOSTA: Okay.

4 PROSPECTIVE JUROR NO. 256: And I said that didn't

5 -- I didn't do that. I didn't take it out. He goes, it's in

6 the log. I put it in the log. You took it. I said, it

7 didn't happen. The owner was really, really angry. When I

8 said it again, I did not do this, the pre-press manager said,

9 are you calling me a liar? Put you -- and he took a few steps

10 toward me, said he'd put me in the hospital.

11 And I just turned to the two owners, and I said,

12 this didn't happen. You are asking what did I do, and I said,

13 I just looked him in the eye. I said, I'm looking you in the

14 eye, I'm telling you this did not happen. I did not do that.

15 Are you calling me a liar? I said, I'm not calling

16 you a liar. I said, you're mistaken. But I did not do this.

17 I offered to take a lie detector test. I'd pay for it. It

18 just -- they just let it go at that -- at that time.

19 And sometime later, about six months later, they

20 found the film. It was -- the guy was wrong.

21 MS. RADOSTA: Okay.

22 PROSPECTIVE JUROR NO. 256: And that's -- they

23 didn't so much apologize to me, but in answer to the -- in

24 answer to your question, it was difficult. It was difficult

25 knowing that I was innocent and being accused of something by

1 somebody who had credibility and put trust in that company.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 256: And I had to tell them I

4 didn't do it.

5 MS. RADOSTA: And all -- if I'm understanding your

6 story correctly, all you could do to defend yourself is just

7 say, I didn't do it.

8 PROSPECTIVE JUROR NO. 256: Yeah.

9 MS. RADOSTA: You couldn't say --

10 PROSPECTIVE JUROR NO. 256: I look him eye to eye.

11 MS. RADOSTA: -- uh --

12 PROSPECTIVE JUROR NO. 256: I couldn't prove -- I

13 couldn't prove the negative.

14 MS. RADOSTA: Right.

15 PROSPECTIVE JUROR NO. 256: You know, all I could

16 tell them -- you know, I could -- again, like I said, offer

17 to, you know, take a lie detector test for what that was

18 worth --

19 MS. RADOSTA: Right.

20 PROSPECTIVE JUROR NO. 256: -- at the time and look

21 eye to eye to him.

22 MS. RADOSTA: Okay. And you said that -- so in the

23 end did you feel that the other person truly -- the person

24 that accused you --

25 PROSPECTIVE JUROR NO. 256: At the time --

1 MS. RADOSTA: -- [inaudible] --
2 PROSPECTIVE JUROR NO. 256: -- I think he -- I think
3 he believed he did it -- I didn't -- I mean, I -- I -- he --
4 in his mind he remembered giving it to me.
5 MS. RADOSTA: Okay.
6 PROSPECTIVE JUROR NO. 256: I don't think he was
7 like just throwing me under the bus as a, you know,
8 sacrificial lamb.
9 MS. RADOSTA: Okay.
10 PROSPECTIVE JUROR NO. 256: I think he believed it
11 at the time.
12 MS. RADOSTA: Okay. And did you feel that the fact
13 that they did not let you go from your job maybe they felt
14 that there was some truth in what you were saying?
15 PROSPECTIVE JUROR NO. 256: Evidently, I convinced
16 them enough (indecipherable) I convinced them enough that,
17 yeah, they didn't fire me on the spot.
18 MS. RADOSTA: Okay. But as you said a second ago,
19 if I heard you correctly, it's incredibly difficult to prove a
20 negative --
21 PROSPECTIVE JUROR NO. 256: Um-hum.
22 MS. RADOSTA: -- it's actually --
23 PROSPECTIVE JUROR NO. 256: Impossible.
24 MS. RADOSTA: -- almost impossible --
25 PROSPECTIVE JUROR NO. 256: Yeah.

1 MS. RADOSTA: -- to prove a negative.

2 Did you -- when that was happening to you, did you

3 kind of run through in your head like how am I going to prove

4 this to them, and realize, I -- how do I do that?

5 PROSPECTIVE JUROR NO. 256: Yes.

6 MS. RADOSTA: Okay.

7 PROSPECTIVE JUROR NO. 256: Yeah.

8 MS. RADOSTA: Is there -- does anybody else have a

9 similar situation? Mr. Wells-Thompson, Badge 152.

10 Thank you, Mr. Rosenfield, for sharing that.

11 PROSPECTIVE JUROR NO. 256: Yes.

12 PROSPECTIVE JUROR NO. 152: I remember a case in

13 high school for the finals for biology. I did the test. I

14 got 100 percent. It was to move to the next grade. And I got

15 pulled in the office, they're like, it's impossible, your

16 score. You know, and I was like, well, I don't understand.

17 They're like, you got 100. Like, nobody gets that.

18 And you know, it went back and forth. But they

19 ended up putting me back into a testing class to have me take

20 the test again. Little did they know, before that I --

21 that's like kind of my thing --

22 MS. RADOSTA: Um-hum.

23 PROSPECTIVE JUROR NO. 152: -- biology.

24 MS. RADOSTA: Okay.

25 PROSPECTIVE JUROR NO. 152: Anything like that. So

1 I -- a lot of National Geographics, before it was like
2 encyclopedias, got the Internet so, you know, read -- a lot of
3 reading, reading. And so the opportunity came. The
4 instructor gave the test right off the bat. I aced it again.
5 And they just let me sit in the class.

6 MS. RADOSTA: They just let you -- I'm sorry?

7 PROSPECTIVE JUROR NO. 152: Just sit in a class,
8 because they couldn't move me. Nobody really apologized or
9 anything about it, just -- it's just like I can't do anything
10 because they have -- you have to sit here.

11 MS. RADOSTA: Okay. And I'm sorry if I'm not
12 completely understanding. The test was to move you to the
13 next level.

14 PROSPECTIVE JUROR NO. 152: Yeah.

15 MS. RADOSTA: And then you -- but they put you back
16 anyway and you had to --

17 PROSPECTIVE JUROR NO. 152: They --

18 MS. RADOSTA: -- take the test again and then still
19 didn't move --

20 PROSPECTIVE JUROR NO. 152: It was like
21 another --

22 MS. RADOSTA: -- you?

23 PROSPECTIVE JUROR NO. 152: -- a prep class.

24 MS. RADOSTA: Sure.

25 PROSPECTIVE JUROR NO. 152: For -- to take the test

1 again, but the instructor wanted to see, so she gave me the
2 test at the beginning. And I passed it.

3 MS. RADOSTA: Okay. So --

4 PROSPECTIVE JUROR NO. 152: Same results.

5 MS. RADOSTA: I apologize for -- for interrupting.
6 When -- was it the exact same exam or was it slightly
7 different if you remember?

8 PROSPECTIVE JUROR NO. 152: It was slightly
9 different.

10 MS. RADOSTA: Okay. When you were first accused of
11 -- not being able to have aced the -- got the 100 percent,
12 what did you -- what did you feel in that moment?

13 PROSPECTIVE JUROR NO. 152: It was kind of
14 embarrassing.

15 MS. RADOSTA: Okay. Did you -- did at any point
16 when they said we want -- well, the teacher apparently just
17 wanted you to take the exam because she was curious; is that a
18 fair statement, the second exam?

19 PROSPECTIVE JUROR NO. 152: Yeah, the instructor,
20 because they were -- she was curious.

21 MS. RADOSTA: Um, did -- did you ever feel like, no,
22 you know what, I -- I passed that first one and I'm sticking
23 with that number rather than take a second exam?

24 PROSPECTIVE JUROR NO. 152: I think in the
25 beginning.

1 MS. RADOSTA: Okay.

2 PROSPECTIVE JUROR NO. 152: But then I was like you
3 know what, whatever. I can do it again, so.

4 MS. RADOSTA: Okay. Did your parents ever get
5 involved in all this? Because they were essentially accusing
6 you of cheating.

7 PROSPECTIVE JUROR NO. 152: Right.

8 MS. RADOSTA: Did your parents ever get involved?

9 PROSPECTIVE JUROR NO. 152: My -- see, my mom was
10 just, just take it again.

11 MS. RADOSTA: Okay.

12 PROSPECTIVE JUROR NO. 152: You know, because they
13 knew that that was my thing.

14 MS. RADOSTA: Sure.

15 PROSPECTIVE JUROR NO. 152: So --

16 MS. RADOSTA: They said, take it again. You'll show
17 them, it'll all be fine.

18 PROSPECTIVE JUROR NO. 152: Yeah.

19 MS. RADOSTA: And then in the end you were not able
20 to get out of the class that they put you in anyway?

21 PROSPECTIVE JUROR NO. 152: No. I had to run its
22 course, but I didn't have to do any of the work.

23 MS. RADOSTA: Okay.

24 PROSPECTIVE JUROR NO. 152: I just kind of
25 just --

1 MS. RADOSTA: All right.

2 PROSPECTIVE JUROR NO. 152: -- kind of just sat
3 there and did all -- read and -- artwork or whatever.

4 MS. RADOSTA: Other than taking the exam a second
5 time, could you have thought of any way to prove that you
6 hadn't cheated?

7 PROSPECTIVE JUROR NO. 152: Probably not.

8 MS. RADOSTA: Okay. Was it important to you, to
9 prove to them that you hadn't cheated?

10 PROSPECTIVE JUROR NO. 152: Yeah.

11 MS. RADOSTA: To prove that you were not what they -
12 - you didn't do what they said you did?

13 PROSPECTIVE JUROR NO. 152: Yeah.

14 MS. RADOSTA: Okay. Thank you.

15 Is there anyone else that has had a similar
16 experience? Thank you.

17 The other thing that I wanted to touch on and I -- I
18 did talk about this with a few people. The idea of the
19 State's burden and -- and what they have to prove in the case.
20 And is there anybody here, if they were charged with a crime,
21 would think that they would want to testify? Yeah? There was
22 a lot of people? Okay.

23 Mr. Tonan, back -- could you hand the badge -- the
24 mic to him -- Badge 479. You're nodding your heard. You
25 think you would want to testify?

1 PROSPECTIVE JUROR NO. 479: Yeah.

2 MS. RADOSTA: And why is that?

3 PROSPECTIVE JUROR NO. 479: To prove my innocence.

4 MS. RADOSTA: To -- you would want to -- you would
5 actually want to prove your innocence?

6 PROSPECTIVE JUROR NO. 479: Sure, of course.

7 MS. RADOSTA: Even though you are aware that you
8 don't have to prove your innocence if you're charged with a
9 crime, you would still --

10 PROSPECTIVE JUROR NO. 479: Well, I mean, it would
11 depend on what my attorneys told me to do but I -- my first
12 response would be to get up and say, I didn't do that, you
13 know.

14 MS. RADOSTA: Okay. Can you think --

15 PROSPECTIVE JUROR NO. 479: [Inaudible] wrong.

16 MS. RADOSTA: -- of any reasons why somebody might
17 not want to testify during a trial?

18 PROSPECTIVE JUROR NO. 479: Afraid of saying the
19 wrong thing, I guess, you know --

20 MS. RADOSTA: Okay.

21 PROSPECTIVE JUROR NO. 479: -- and be not -- and
22 understood, you know, and getting their idea through possibly.

23 MS. RADOSTA: Okay.

24 PROSPECTIVE JUROR NO. 479: But if you're
25 innocent --

1 MS. RADOSTA: Okay. You just shrugged your
2 shoulders there. If you're innocent --

3 PROSPECTIVE JUROR NO. 479: No, I'm saying if you're
4 innocent, I think, you know, you should -- you know you're
5 innocent.

6 MS. RADOSTA: Um-hum. Can you imagine -- I mean,
7 you did reference the fact that, you know, you would listen,
8 you know, presumably you would listen to your attorneys and if
9 they said don't --

10 PROSPECTIVE JUROR NO. 479: Oh, sure. Yeah. Of
11 course.

12 MS. RADOSTA: -- you -- you -- you would --

13 PROSPECTIVE JUROR NO. 479: That's why you have
14 them.

15 MS. RADOSTA: But also, could you imagine -- I mean,
16 is this experience for anybody here pleasant talking in front
17 of a whole bunch of people? Would you do this if you didn't
18 have to do it? No. The -- the panel is shaking their head in
19 mass no.

20 PROSPECTIVE JUROR NO. 479: [Inaudible].

21 MS. RADOSTA: Oh, so could you imagine that maybe
22 just -- I mean, you're just sitting here as jurors.

23 PROSPECTIVE JUROR NO. 479: Yeah.

24 MS. RADOSTA: You are not being accused of anything.
25 You are not being charged with a crime. Could you imagine

1 that the person sitting -- the person charged is -- there's a
2 lot riding on what they say on the stand. Could you imagine
3 that maybe they just might not feel comfortable?

4 PROSPECTIVE JUROR NO. 479: Yeah, I suppose that's
5 possible, yeah.

6 MS. RADOSTA: That they could be nervous.

7 PROSPECTIVE JUROR NO. 479: Sure.

8 MS. RADOSTA: That they could be as you said
9 following the advice of their attorney. Would you -- Mr. --
10 Mr. Tonan -- since -- sorry -- I -- it's in my head every
11 time, Mr. Tonan.

12 PROSPECTIVE JUROR NO. 479: It's happened for years.

13 MS. RADOSTA: As -- you have the mic. Could --
14 would you hold it against my client if he decided not to
15 testify?

16 PROSPECTIVE JUROR NO. 479: No.

17 MS. RADOSTA: Okay. Even though you've said if you
18 were --

19 PROSPECTIVE JUROR NO. 479: When you asked me --

20 MS. RADOSTA: -- charged with a crime.

21 PROSPECTIVE JUROR NO. 479: -- what I would do.

22 MS. RADOSTA: Okay. But you would not hold it
23 against him?

24 PROSPECTIVE JUROR NO. 479: No.

25 MS. RADOSTA: Is there anybody in the -- and there

1 were a lot of people that were nodding along with the reasons
2 -- potential reasons why somebody may not want to testify. Is
3 there anybody here that would hold it against my client if he
4 decided not to testify?

5 And this is -- this is a big one. This is an
6 important one that's very basic to the constitution, he has a
7 right not to testify. But people are people, and people want
8 to hear what people have to say.

9 So is there anybody here that would hold it against
10 him if he did not testify? I'm not seeing -- I'm seeing a lot
11 of head shakes.

12 Is there anybody here that thinks that we have to
13 prove anything about our client? That we have to prove him
14 innocent? Nobody? I'm going to ask that the mic be handed
15 over to Ms. Brand, because we did have a brief conversation
16 about this the other day. Juror No. 111.

17 We did talk about this a little bit the other day.

18 PROSPECTIVE JUROR NO. 111: Yes.

19 MS. RADOSTA: The idea that you would -- I believe
20 what you said the other day to us is that you would expect us
21 to prove to you that our client didn't do what he is accused
22 of. Am I misstating what you said? And if I am, please
23 correct me.

24 PROSPECTIVE JUROR NO. 111: Well, what I tried to
25 express was that I thought it would be fair for both sides to

1 present, you know, the evidence.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 111: But I realized, you
4 know, that he -- your side of it, the defendant's side, you
5 say that he -- that you don't have to have testimony from that
6 side, then I'll go with that. That's fine.

7 I understand what you said just one minute ago. So
8 -- and you know, and as I did express to you the last time we
9 talked, that I do understand the procedures of the court. So
10 no, I -- I don't think that -- that you have to do anything
11 more than what you have to do, so.

12 MS. RADOSTA: Could -- could you imagine if you were
13 chosen to be a juror on this particular case and we'd sit here
14 for however long, two days, five days, ten days, whatever it
15 is, listening to evidence but you'd ever hear anything from my
16 client.

17 PROSPECTIVE JUROR NO. 111: Right.

18 MS. RADOSTA: And you go back in the jury room to
19 deliberate. Would you be satisfied with that as being the
20 evidence that you're to consider?

21 PROSPECTIVE JUROR NO. 111: Yes.

22 MS. RADOSTA: Okay. You wouldn't be back there
23 going, but you know what, if only he had testified, then I
24 would be convinced that -- of whatever.

25 PROSPECTIVE JUROR NO. 111: No.

1 MS. RADOSTA: Okay. Let me ask you this; if you
2 heard somebody else in the jury room saying, if only he had
3 testified that I was so curious about what he would have to
4 say about X, Y and Z, what would you do if you heard another
5 juror saying that?

6 PROSPECTIVE JUROR NO. 111: Well, would just
7 reiterate that -- you know, it's the State's burden to prove
8 guilt and that the evidence that's presented that, you know,
9 through the Court, is what we have to accept and use to make
10 our decision.

11 MS. RADOSTA: Okay. All right. One of the other
12 jurors who was excused I believe there might have been one or
13 two other people that had said this as well -- had referenced
14 that just because he's sitting here in the courtroom, just
15 because Mr. Sena is sitting there, next -- next to Mr. Lopez-
16 Negrete, sitting at the defendant's table, that he must have
17 done something in order to be sitting there.

18 Did anybody hear -- I think it was -- I think it was
19 Ms. Huff that might have said that a few days ago. Did
20 anybody else hear her say that?

21 UNIDENTIFIED SPEAKER: I thought it was a guy that
22 said it.

23 MS. RADOSTA: Might have been.

24 UNIDENTIFIED SPEAKER: I heard [inaudible].

25 UNIDENTIFIED SPEAKER: [Inaudible] not sure who said

1 it.

2 MS. RADOSTA: Okay. Well, Mr. Riggins, if you would
3 take the mic. Sorry.

4 PROSPECTIVE JUROR NO. 394: That's all right.

5 MS. RADOSTA: When you -- when you heard the other
6 juror, whoever it was say that, what did you think? Did
7 you --

8 PROSPECTIVE JUROR NO. 394: Um --

9 MS. RADOSTA: -- did -- did it -- you noticed it.

10 PROSPECTIVE JUROR NO. 394: I'm not saying that's
11 true.

12 MS. RADOSTA: Okay.

13 PROSPECTIVE JUROR NO. 394: But in a lot of cases,
14 most people from what my experience are found guilty. But so
15 there may be -- just because there's some truth doesn't mean
16 that's the truth.

17 MS. RADOSTA: I'm not sure I understand what --

18 PROSPECTIVE JUROR NO. 394: That it doesn't mean
19 that he actually did.

20 MS. RADOSTA: Okay.

21 PROSPECTIVE JUROR NO. 394: Because there are people
22 that are -- are -- that are accused that are innocent.

23 MS. RADOSTA: Okay. So just because he's sitting
24 here in the courtroom at the defendant's table, that does not
25 mean to you that he must have done something in order to be

1 sitting there.

2 PROSPECTIVE JUROR NO. 394: No. Not necessarily.

3 MS. RADOSTA: All right. And can you -- Mr.

4 Rosenfield also had a comment, Badge 256.

5 PROSPECTIVE JUROR NO. 256: If you're asking me what

6 I thought at the time you said that --

7 MS. RADOSTA: Yes.

8 PROSPECTIVE JUROR NO. 256: -- my mind went to the

9 people who were getting let out of prison when I think just

10 received a million dollar reward for 36 years --

11 MS. RADOSTA: Um-hum.

12 PROSPECTIVE JUROR NO. 256: -- falsely imprisoned.

13 MS. RADOSTA: Um-hum.

14 UNIDENTIFIED SPEAKER: Oh, I see.

15 MS. RADOSTA: Yeah.

16 PROSPECTIVE JUROR NO. 256: You know, it wasn't such

17 a good deal but --

18 MS. RADOSTA: Yeah.

19 PROSPECTIVE JUROR NO. 256: -- no, I've thought

20 about that, you know, there --

21 MS. RADOSTA: So --

22 PROSPECTIVE JUROR NO. 256: -- there's a lot of

23 people who --

24 MS. RADOSTA: -- okay -- falsely --

25 PROSPECTIVE JUROR NO. 256: -- have been -- been

1 wrongly convicted.

2 MS. RADOSTA: Falsely accused, wrongly convicted.
3 So the fact that he is just even in the courtroom, that does
4 not hold any weight with you?

5 PROSPECTIVE JUROR NO. 256: No. It --

6 MS. RADOSTA: Okay. Is there anybody here who would
7 disagree with that? And once again, we just -- we're really
8 just looking for people to be honest. I appreciated when --
9 whoever the juror was that said that, that they said it,
10 because those are things we need to know.

11 I'm guessing that Ms. Dolan probably does not feel
12 that way considering the fact that she teaches social studies.
13 But did you hear that comment, Ms. Dolan, when it was made?
14 Could you pass the mic back to her?

15 Did -- did it stick out in your mind as -- when you
16 heard it?

17 PROSPECTIVE JUROR NO. 338: It did, yeah.

18 MS. RADOSTA: That --

19 PROSPECTIVE JUROR NO. 338: I did notice it.

20 MS. RADOSTA: -- were -- in any way were you
21 thinking, a little surprised that someone would say that given
22 your area of teaching or --

23 PROSPECTIVE JUROR NO. 338: Right. Well, people
24 just assume just because someone is accused of a crime that
25 they did the crime; that's unfair to all of the people who

1 have been falsely accused.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 338: You can't assume that.

4 MS. RADOSTA: Okay.

5 PROSPECTIVE JUROR NO. 338: That's not fair.

6 MS. RADOSTA: Is there anybody here in the -- in the
7 courtroom -- and this is a slightly different version. Is
8 there anybody here that's heard a story on the news just heard
9 a blurb on the news and thought, oh my goodness, that person
10 is guilty. Is there anybody here that's done that? I'm
11 guessing most people have done that.

12 Ms. Dolan, you have the mike and you're nodding your
13 head. But in this particular situation, would you agree that
14 this is not just hearing something on the news?

15 PROSPECTIVE JUROR NO. 338: No, this is different.
16 This is -- we're in court.

17 MS. RADOSTA: Okay.

18 PROSPECTIVE JUROR NO. 338: There's evidence to be
19 presented.

20 MS. RADOSTA: Okay.

21 PROSPECTIVE JUROR NO. 338: It's a different -- it's
22 -- and it's he's innocent at this moment.

23 MS. RADOSTA: Okay. So -- and the fact that there
24 might be more than a few charges that the State has -- has
25 pled against my client, would that have any impact on you, one

1 versus ten versus twenty?

2 PROSPECTIVE JUROR NO. 338: No. The number doesn't
3 matter. It's still innocent until proven otherwise.

4 MS. RADOSTA: Okay. Is there anybody that would
5 disagree with that statement? I saw Mr. Gall nodding to that
6 -- to what Ms. Dolan was saying.

7 Is there anybody who disagrees with that, that if
8 it's a lot of charges, well, that has to mean something. No
9 response to that. Okay. Thank you.

10 Court's indulgence.

11 (Pause in the proceedings)

12 MS. RADOSTA: There's been a fair amount of
13 questioning primarily I think by me about the fact that there
14 is potential video evidence in this particular case. Is the -
15 - is there anybody here that -- at that thought, if there's a
16 video, why is there a trial? Nobody thought, wow, okay, Mr.
17 -- Mr. Fragale, Mr. -- Mr. Rosenfield. Could you pass the mic
18 down?

19 THE COURT RECORDER: Badge number?

20 MS. RADOSTA: Badge No. 561.

21 PROSPECTIVE JUROR NO. 561: 561, yes.

22 MS. RADOSTA: So my question was, did you think if
23 there's video why is there a trial, and you raised your hand.

24 PROSPECTIVE JUROR NO. 561: Yes, I think that would
25 -- the video would be enough to prove something unless there's

1 something in there that we haven't seen or --

2 MS. RADOSTA: Okay. Would it -- would it change

3 your mind if there is -- that perhaps not all of the charges

4 relate to potential video; would that change your mind as to

5 why there could be a trial?

6 PROSPECTIVE JUROR NO. 561: Oh, sure.

7 MS. RADOSTA: Okay. Will you be able to judge the

8 charges that have to potentially do with video separate from

9 the charges that don't have anything to do with video?

10 PROSPECTIVE JUROR NO. 561: Yes.

11 MS. RADOSTA: Okay. And Mr. Rosenfield, you also

12 raised you hand when I said --

13 PROSPECTIVE JUROR NO. 256: Yeah, the same. I mean,

14 the --

15 MS. RADOSTA: Okay.

16 PROSPECTIVE JUROR NO. 256: -- knee jerk when, you

17 know, reading the synopsis knowing that there is videos and,

18 you know, obviously, your knee jerk is to think, wow, and he

19 didn't take a plea.

20 MS. RADOSTA: Okay.

21 PROSPECTIVE JUROR NO. 256: Perhaps a plea wasn't

22 offered.

23 MS. RADOSTA: Okay.

24 PROSPECTIVE JUROR NO. 256: But -- but then as you

25 discussed in your opening statement that there -- as you just

1 said it now -- that there could be other charges that --
2 MS. RADOSTA: Um-hum.
3 PROSPECTIVE JUROR NO. 256: -- will be more
4 vigorously contested.
5 MS. RADOSTA: Okay.
6 PROSPECTIVE JUROR NO. 256: And it's -- frankly,
7 it's interesting with your questions -- with your questioning
8 you're encouraging watching the video as opposed to
9 suppressing the video so that's interesting.
10 MS. RADOSTA: Perhaps unexpected?
11 PROSPECTIVE JUROR NO. 256: Unexpected, yes.
12 MS. RADOSTA: Okay. Is there anybody else that felt
13 that that was unexpected, that like Mr. Rosenfield, that I was
14 -- that I have been encouraging watching of the video given
15 the fact that I'm Mr. Sena's defense attorney? No?
16 PROSPECTIVE JUROR NO. 394: So, I believe it was --
17 THE COURT: This is Mr. Riggins.
18 MS. RADOSTA: Mr. Riggins.
19 THE COURT: Badge 394.
20 PROSPECTIVE JUROR NO. 394: So, I believe you had
21 mentioned before that you wanted us to look more closely.
22 MS. RADOSTA: Um-hum.
23 PROSPECTIVE JUROR NO. 394: Because we may notice
24 other things rather than what it looks like on the surface in
25 the video, along those lines, I'm paraphrasing.

1 MS. RADOSTA: Um-hum.

2 PROSPECTIVE JUROR NO. 394: So yes, of course, I
3 believe you have encouraged us. You do want us to watch the
4 video because there may be something there we notice that may
5 sway us one way or the other to believe whether he may be
6 guilty or innocent of certain charges.

7 MS. RADOSTA: Okay. Does anybody else -- does
8 anybody have a problem with that idea at all? Okay. I'm
9 going to just take a moment.

10 Thank you, Mr. Riggins.

11 (Pause in the proceedings)

12 MS. RADOSTA: Court's indulgence --

13 THE COURT: Okay.

14 MS. RADOSTA: -- just for a moment. Thank you.

15 (Pause in the proceedings)

16 MS. RADOSTA: I just have a couple of quick follow
17 up questions. Mr. Kittredge, Badge 572. Who's got --

18 PROSPECTIVE JUROR NO. 572: Yeah.

19 MS. RADOSTA: -- if you could hand the mic down to
20 him.

21 You -- we had talked just briefly about your
22 father's contact with the system, that it was a bank robbery
23 that was caught on video.

24 PROSPECTIVE JUROR NO. 572: Yes.

25 MS. RADOSTA: And you said no reason to fight it, it

1 was all caught on video. Is that essentially -- I'm sorry if
2 I'm [inaudible].

3 PROSPECTIVE JUROR NO. 572: Yeah, you're right.

4 MS. RADOSTA: Okay. So let me ask you this
5 question. If by chance if there had been other allegations
6 before the video, somebody outside the bank said, oh my God,
7 he pulled a gun on me, too, before he went into the bank,
8 would the fact that there was video evidence of what other
9 people said happened in the bank, which turned out to be true;
10 would that cause you to think what happened with the person
11 outside, out front, what they are saying was true as well?

12 MR. SWEETIN: Can we -- may we approach, Judge?

13 THE COURT: Yes.

14 (Off-record bench conference)

15 MS. RADOSTA: Mr. Kittredge, I'm going to try to
16 rephrase the question because I don't think it was
17 particularly clear.

18 I saw the look on your face. So you -- you said
19 earlier that you watched the video and what your father was
20 accused of you saw happen on the videotape.

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MS. RADOSTA: Okay. Had there been a -- someone
23 else that said something else happened prior to the incident
24 in the bank, earlier, again, before he -- right before he
25 walked into the bank or earlier in the day; would the fact

1 that what you saw on the videotape actually happened, and
2 somebody accused him of that, would that impact your decision-
3 making on whether or not the other incident before, not on
4 video, happened or didn't happen?

5 PROSPECTIVE JUROR NO. 572: What you're asking me
6 though changes -- changes my dad's -- what he faced.

7 MS. RADOSTA: Okay.

8 PROSPECTIVE JUROR NO. 572: Do you know what I mean?

9 MS. RADOSTA: Yes.

10 PROSPECTIVE JUROR NO. 572: If he would have faced
11 that, something --

12 MS. RADOSTA: Okay.

13 PROSPECTIVE JUROR NO. 572: -- an altercation
14 outside --

15 MS. RADOSTA: Right.

16 PROSPECTIVE JUROR NO. 572: -- somebody saw him do
17 something and then he went in --

18 MS. RADOSTA: Um-hum.

19 PROSPECTIVE JUROR NO. 572: -- and that was part of
20 it, you know --

21 MS. RADOSTA: Right.

22 PROSPECTIVE JUROR NO. 572: -- joined, then --
23 then --

24 MS. RADOSTA: Um-hum.

25 PROSPECTIVE JUROR NO. 572: -- it would totally

1 change my perception on a lot of things.

2 MS. RADOSTA: Okay.

3 PROSPECTIVE JUROR NO. 572: On what I saw in the
4 video versus what I didn't see happen outside.

5 MS. RADOSTA: Okay.

6 PROSPECTIVE JUROR NO. 572: But since that didn't
7 happen, and what he did do was accurate and true to form on
8 the video, then yes, that was [inaudible].

9 MS. RADOSTA: So if I'm understanding you correctly,
10 you're honestly telling me that you can't answer my -- my
11 scenario because it's just simply not what happened in your
12 dad's case.

13 PROSPECTIVE JUROR NO. 572: Exactly.

14 MS. RADOSTA: Okay. That's fair. I appreciate
15 that. Let me -- and then Mr. Rosenfield, you mentioned in the
16 past few minutes about cases where people are exonerated and
17 are -- have gotten money for being wrongfully convicted.

18 PROSPECTIVE JUROR NO. 256: Um-hum.

19 MS. RADOSTA: If you recall in those situations,
20 were the people ultimately exonerated because there was
21 physical evidence that came -- that was retested or do you not
22 know?

23 PROSPECTIVE JUROR NO. 256: Yeah, the one with the
24 -- the specific one I just mentioned, the million dollars, I
25 don't know anything about the case, I just know that it was 36

1 years and he got a million dollars. There's been other ones
2 where I know DNA testing has -- I can't quote the actual, you
3 know, cases, but I know DNA, obviously has exonerated people,
4 possibly, probably, you know, some confessions, somebody
5 incarcerated or something.

6 MS. RADOSTA: Okay. So you -- you can picture the
7 scenario of where it's perhaps no physical evidence in the
8 case, but rather testimonial evidence --

9 PROSPECTIVE JUROR NO. 256: Um-hum.

10 MS. RADOSTA: -- that caused somebody to be
11 wrongfully convicted?

12 PROSPECTIVE JUROR NO. 256: Oh, absolutely.

13 MS. RADOSTA: That's -- that's something that you
14 can see as possible -- you've heard of it happening?

15 PROSPECTIVE JUROR NO. 256: Oh, of course.

16 MS. RADOSTA: Okay. Is there anybody else here
17 that's heard of a situation like that? Ms. Dolan? If you
18 could just pass the mic back to her.

19 PROSPECTIVE JUROR NO. 338: Again, this is with
20 children, but when an authority figure listens at all to an
21 accusation against a student --

22 MS. RADOSTA: Um-hum.

23 PROSPECTIVE JUROR NO. 338: -- once, maybe even
24 twice, other students tend to then start accusing them of
25 things --

1 MS. RADOSTA: Oh.

2 PROSPECTIVE JUROR NO. 338: -- when they didn't do

3 it. I've just -- I've seen it a lot over the years. So the

4 authority figure has to be very careful because children will

5 gang up on the person and accuse them of things.

6 MS. RADOSTA: Okay.

7 PROSPECTIVE JUROR NO. 338: And constantly be the --

8 well, I -- he did it, when clearly the evidence indicates the

9 kid wasn't anywhere near. But that does happen.

10 MS. RADOSTA: Okay. And I'm guessing in elementary

11 school there is not a lot of DNA evidence being taken or

12 fingerprint evidence or --

13 PROSPECTIVE JUROR NO. 338: Yeah, no, you have to

14 rely on -- on testimony really.

15 MS. RADOSTA: Okay. And --

16 PROSPECTIVE JUROR NO. 338: -- on [inaudible].

17 MS. RADOSTA: -- so you -- have you ever been -- you

18 yourself been in that situation?

19 PROSPECTIVE JUROR NO. 338: Oh yeah, as a classroom

20 teacher, especially with fifth graders, it --

21 MS. RADOSTA: Have you ever --

22 PROSPECTIVE JUROR NO. 338: -- it happens all the

23 time.

24 MS. RADOSTA: Have you ever been in the situation

25 where you found out later that you made the wrong -- that you

1 made the wrong decision?

2 PROSPECTIVE JUROR NO. 338: I'm -- I'm certain I
3 have. I don't have any examples in my mind. But early -- as
4 a -- and as a newer teacher I made mistakes and I learned from
5 those mistakes so I'm more cautious now.

6 MS. RADOSTA: All right. Okay. And I assume you
7 mean cautious about --

8 PROSPECTIVE JUROR NO. 338: Listen --

9 MS. RADOSTA: -- accusing or -- or taking the word
10 just of the kids without more?

11 PROSPECTIVE JUROR NO. 338: Right. Exactly. Not
12 just automatically jumping to the conclusion just because this
13 many people said that this kid has done something, I'm not
14 going to assume that. I have to talk to the child, do some --
15 find out as much as I can about it before coming to any
16 conclusions, just like I guess on a jury. I have -- I have to
17 wait until I've gathered more evidence. I can't just assume
18 oh, well, this kid gets in trouble so this kid is guilty. You
19 can't do that because they get falsely accused a lot.

20 MS. RADOSTA: Okay. All right. Thank you.

21 At this point, Judge, I think I'm done. I think we
22 can --

23 THE COURT: Okay. State, do you pass for cause?

24 MS. SUDANO: Yes, Your Honor.

25 THE COURT: Ms. Radosta?

1 MS. RADOSTA: Just let me double check, Judge.
2 Sorry.
3 (Pause in the proceedings)
4 MS. RADOSTA: Your Honor, we did make some prior
5 challenges for cause --
6 THE COURT: Um-hum.
7 MS. RADOSTA: -- outside the presence. I'm not sure
8 if you want me to just for the record right now renew them.
9 THE COURT: What -- yeah, just --
10 MS. RADOSTA: -- just -- I'm renewing --
11 THE COURT: -- approach so --
12 MS. RADOSTA: -- those --
13 THE COURT: -- I want to --
14 MS. RADOSTA: Yeah.
15 THE COURT: -- make sure I'm talking about the right
16 one; okay?
17 MS. RADOSTA: Okay.
18 (Off-record bench conference)
19 THE COURT: Okay. So, ladies and gentlemen, at this
20 time what we're going to be doing is -- is doing our
21 peremptory challenges. And rather than have you sit here and
22 have -- because what I do is I give the State a form and then
23 they check theirs off and they pass it over to the defense and
24 check theirs off, it goes back and forth.
25 Rather than have you just sit here and watch that

1 happen I'm going to give you all a break. Before you do,
2 though, the two that are here in the courtroom, you're going
3 to be excused. The last two is Mr. Alco Cabani [phonetic],
4 and Charles Barber.

5 All right. Thank you so much for being here. I'm
6 going to excuse you and let you go back the Jury Commission
7 room and let them know that you've been excused; okay?

8 We'll fill this out and -- ladies and gentlemen,
9 it's probably -- it's got to probably take probably about a
10 half hour to 45 minutes. So what I'm going to do is I'm going
11 to -- I'm going to ask you to go ahead and take your break but
12 be ready to come back in the courtroom in about a half hour,
13 be out there (indecipherable) and we'll get you in as soon as
14 we can.

15 You are admonished, once again, before you leave,
16 not to talk to or converse amongst yourselves or with anyone
17 else on any subject connected with this trial or read, watch
18 or listen to any report or commentary on the trial or any
19 person connected with this trial, by any medium of
20 information, including without limitation to newspapers,
21 television, the Internet or radio, or form or express any
22 opinion on any subject connected with this trial until the
23 case is finally submitted to you.

24 All right. We'll be at ease while you --

25 UNIDENTIFIED SPEAKER: Thank you, Judge.

1 THE COURT: Sure, sure. Hold on.
2 Mr. Rosenfield?
3 PROSPECTIVE JUROR NO. 256: Is it possible to take a
4 poll and see if everybody's willing to stay as long as it
5 takes to --
6 THE COURT: Well, you're going to stay.
7 PROSPECTIVE JUROR NO. 256: Oh.
8 THE COURT: We're going to get the jury figured out
9 tonight, okay? Not tomorrow. We're going to do it tonight.
10 (Outside the presence of the prospective jurors)
11 THE COURT: Okay. We're outside the presence of the
12 jury.
13 We're going to print out a list for you,
14 understanding that there's -- right now there is six positions
15 for alternates. I'm giving you two -- two strikes of those
16 alternates.
17 MS. RADOSTA: Six or four?
18 THE COURT: I'm sorry, one per side. There's six.
19 There'll be four alternates.
20 MS. RADOSTA: Okay.
21 THE COURT: Okay? So you'll be able to strike one
22 of those six year. So there would be four when you're -- if
23 -- if you -- if you exercise them; okay?
24 MS. RADOSTA: Okay.
25 THE COURT: When you read the form here you'll see

1 which ones are the alternates and those are the only ones you
2 can exercise your challenges for, of the last six individuals
3 that came -- went into the box; okay?

4 Do you understand Ms. -- I know Ms. Radosta hasn't
5 been in here before but --

6 MS. RADOSTA: I -- the -- I think Tia mentioned that
7 to us the other day and we were just --

8 THE COURT: Okay.

9 MS. RADOSTA: -- but I thought it was going to be
10 the last four not the last six. But I understand --

11 THE COURT: No, it's --

12 MS. RADOSTA: -- it has to be six --

13 THE COURT: There's --

14 MS. RADOSTA: -- because if we strike two then --

15 THE COURT: Right. There's eight peremptory
16 challenges each.

17 MS. RADOSTA: Yeah.

18 THE COURT: If you waive any it doesn't mean you
19 waive them all; okay. So here's the form. Ed, do you want to
20 give that to them?

21 MS. SUDANO: If we waive, Your Honor, that doesn't
22 affect the alternates; is that right?

23 THE COURT: If you waive the alternate -- you only
24 have one against the alternate.

25 MS. SUDANO: Right. And if we waive one of our

1 first eight --

2 THE COURT: No, it won't.

3 MS. SUDANO: -- it doesn't affect --

4 THE COURT: No, you just take the --

5 MS. SUDANO: Okay.

6 THE COURT: -- first 12 that are in order.

7 MS. SUDANO: Okay. Thank you, Your Honor.

8 THE COURT: Okay? State, let's say you waive all 16

9 of your challenges. You take the first 12 that came into the

10 box and then you still exercise your -- your challenges

11 against the last six; okay?

12 MS. SUDANO: Thank you.

13 THE COURT: The last six will always be considered

14 alternates.

15 MS. SUDANO: Okay.

16 THE COURT: Okay?

17 MS. SUDANO: Thank you.

18 THE COURT: All right. Is there anything that we

19 need to put on the record before we take a break?

20 MS. SUDANO: Just --

21 MS. RADOSTA: Oh, the -- our -- our challenges for

22 cause, Judge.

23 THE COURT: Okay. Yeah, you -- you had requested a

24 challenge for cause with regards to Juror 111, Janice --

25 Janice Brand, and Juror 153, Tanisha Turner. There was

1 considerable argument with regards to both of those
2 previously. I didn't find that there was anything additional
3 that would warrant a challenge for either one of them, short
4 of what was already recognized by the parties, or what was
5 expressed by the parties; okay?

6 All right.

7 THE COURT RECORDER: Going off.

8 THE COURT: Yeah. Okay.

9 (Court recessed at 4:22 P.M., until 5:23 P.M.)

10 (Outside the presence of the prospective jurors)

11 THE COURT: All right. Do you want to go ahead and
12 get the jury in?

13 MS. RADOSTA: Yeah. Actually, Judge, before we do
14 that we need to put something on the record.

15 THE COURT: All right. Hold on, Ed.

16 Okay. We're on the record outside the presence of
17 the jury in Case No. C-311453, State of Nevada versus
18 Christopher Sena in the presence of the Defendant and his
19 counsel as well as the State and their counsel and we're
20 outside the presence of the jury.

21 Ms. Radosta indicated she wanted to put something on
22 the record.

23 MS. RADOSTA: Sorry, Your Honor. Our Clerk that was
24 with us had a list so give us one quick second.

25 We had made a motion to strike a bunch of jurors a

1 few days ago based on their answers on the Jury Questionnaire
2 from -- based on Preciado [phonetic] that they had already
3 indicated that they could not be fair and impartial on their
4 questions on the questionnaire.

5 And the people that you denied me at that time and
6 said that I would have an opportunity still to question them.

7 THE COURT: Um-hum.

8 MS. RADOSTA: After questioning today there -- we --
9 for the record are renewing our for cause challenge because
10 based on Preciado they had previously answered they could not
11 be fair and impartial the jurors, to my recollection were
12 Juror 338, Ms. Dolan, Juror 560, Mr. Hoolapa -- I can't say
13 his name -- H-o-o-p-l-a-p-a, I believe is how it's spelled.

14 THE COURT: Um-hum.

15 MS. RADOSTA: And Mr. Wohletz, 190. Those three
16 were part of my original motion and after even though we were
17 given an opportunity to question them today, or yesterday,
18 whenever it was, they still had originally answered on their
19 Jury Questionnaire that they could not be fair and impartial.
20 And based on the Preciado case, Your Honor, that that answer
21 alone shows an -- it shows that the are not unequivocal in
22 their impartiality which is --

23 THE COURT: So --

24 MS. RADOSTA: -- what is required.

25 THE COURT: So the concern that I have though is

1 that you were given an opportunity to question them further
2 because I believe that that -- after the time frame, between
3 the time that they put --

4 MS. RADOSTA: Um-hum.

5 THE COURT: -- put first through it until now, and
6 every one of those individuals that you talk about had
7 indicated here, before me, inconsistent with their
8 questionnaire, saying that they could be fair and impartial,
9 they would consider the evidence independent, they would make
10 the decision based on that. Every one of those individuals
11 did that.

12 You chose not to question them any further, had let
13 me to believe that you had no further questions with regards
14 to that. So --

15 MS. RADOSTA: I actually did question them all,
16 not --

17 THE COURT: But you didn't challenge them any
18 further. You didn't -- the only one you did was when we
19 ended, you said you had two of them, and that was Ms. Brand
20 and Ms. Turner.

21 MS. RADOSTA: I still believe though, Your Honor,
22 based on the Preciado case -- because I did speak --

23 THE COURT: Okay.

24 MS. RADOSTA: -- to these jurors and their answers
25 alone, initially, saying that they could not be fair and

1 impartial, brings into question their ability to be
2 unequivocal in their impartiality and that's --

3 THE COURT: Okay.

4 MS. RADOSTA: -- the record that we're making.

5 THE COURT: All right.

6 MS. RADOSTA: Additional --

7 THE COURT: Do you want to make a record?

8 MS. RADOSTA: Okay.

9 MS. SUDANO: Oh, go ahead.

10 MS. RADOSTA: No, no, go.

11 THE COURT: Yeah.

12 MS. RADOSTA: I'm sorry, go ahead.

13 MR. SWEETIN: That's fine.

14 MS. SUDANO: Do you want to?

15 MR. SWEETIN: No, go ahead.

16 MS. SUDANO: Okay. Your Honor, I would note, one,
17 this was untimely. The defense did pass the panel for cause.
18 And just so that we're clear on the record, we've spent the
19 last hour or so exercising our peremptory challenges and
20 that's been done prior to this motion being made.

21 Furthermore, Mr. Sweetin made a record previously
22 when Ms. Radosta made the initial motion to strike all of
23 these individuals that they all said that they couldn't be
24 fair. That's not actually what was in the Jury
25 Questionnaires, and I do want to make sure that that's on the

1 record for these people.

2 THE COURT: Well, the ones they're talking about is
3 Badge 338, Robyn Dolan.

4 MS. SUDANO: Yes.

5 THE COURT: Badge 560, Duayne Hoolapa, and then the
6 last one, I can't remember which number --

7 MS. SUDANO: 190.

8 THE COURT: Um --

9 MS. SUDANO: Mr. Wohletz.

10 MS. RADOSTA: Mr. Wohletz.

11 MS. SUDANO: So, Mr. Wohletz --

12 THE COURT: Brian Wohletz, okay.

13 MS. SUDANO: Mr. Wohletz is the one that I have in
14 front of me right now, Badge No. 190. On that question,
15 Question No. 20, he said, "I believe so, but the subject
16 matter is disturbing."

17 THE COURT: Okay.

18 MR. SAVAGE: Furthermore, in front of Your Honor he
19 indicated that he could be fair and impartial, would consider
20 the video evidence, in response to Ms. Radosta's questions
21 about, hey, what if I ask you to watch this more than once,
22 what if I ask you to watch this for details, he did not
23 indicate that he would be unable to do so.

24 Ms. Dolan, Badge No. 338, indicated, "I would be
25 disgusted and disturbed, but my duty is to remain impartial,

1 so I would do my best." In front of Your Honor, she stressed
2 her belief in the Constitution, the fact that everybody is
3 presumed innocent until proven guilty and the fact that
4 everyone is entitled to a jury trial.

5 She did indicate in front of Your Honor
6 unequivocally that she would be able to watch the video
7 evidence, would consider it, and would not have any issue with
8 Ms. Radosta's question, could you watch this more than once,
9 could you watch this for details.

10 Mr. Hoolapa is our second alternate at this point,
11 Badge No. 560. He indicated, no, my children -- my concern
12 would be the children. He, again, reiterated in front of all
13 of us, in front of Your Honor and in response to Ms. Radosta's
14 questions, that he could be fair, could remain impartial,
15 could watch the video, could consider it for details and watch
16 it more than once.

17 THE COURT: Okay. Is there anything in any of the
18 -- of those documents where they say what the defense is
19 saying, that they say that we cannot be fair and impartial?

20 MS. SUDANO: That was the -- my understanding was
21 that Ms. Radosta was raising those because of their responses
22 to Question 20. And I've read their complete responses to
23 Question 20 into the record --

24 THE COURT: Well, is there anything --

25 MS. SUDANO: -- at this point.

1 THE COURT: -- in there that says they say, in their
2 language, we cannot be fair and impartial? Or no, I can't --
3 we can't be fair, or I can't be fair.

4 MS. RADOSTA: Yes.

5 THE COURT: That's what was represented by Ms.
6 Radosta.

7 MS. RADOSTA: Yes, Your Honor. Every single one of
8 them, the question was --

9 THE COURT: Well, show me where, because I --

10 MS. RADOSTA: Can you promise to be fair and
11 impartial, and any equivocation on that answer is an
12 indication that they cannot promise.

13 THE COURT: Well, no, tell me what they've said.

14 MS. RADOSTA: They said -- Mr. -- Mr. Wohletz said,
15 I believe so.

16 THE COURT: Okay. Can he --

17 MS. RADOSTA: That's not -- that's --

18 THE COURT: -- be fair and impartial? I believe so.

19 MS. RADOSTA: I believe so.

20 THE COURT: And you're saying now that that's
21 equivocation?

22 MS. RADOSTA: Yes.

23 THE COURT: Okay.

24 MS. RADOSTA: Because many people answered, "yes".
25 Most people answered --

1 THE COURT: Okay.
2 MS. RADOSTA: -- "yes".
3 THE COURT: Yes.
4 MS. RADOSTA: Mr. --
5 THE COURT: I understand.
6 MS. RADOSTA: -- look him up --
7 THE COURT: Hoolapa.
8 MS. RADOSTA: And I even misspelled it when I
9 spelled it earlier, H-O-O-L-A-P-A.
10 THE COURT: Uh-huh.
11 MS. RADOSTA: He indicates, no.
12 THE COURT: He says --
13 MS. RADOSTA: He cannot be fair and impartial.
14 THE COURT: I cannot be fair and impartial.
15 MS. RADOSTA: No. My concern would be the children.
16 THE COURT: Okay.
17 MS. RADOSTA: And I believe Ms. Dolan, I think I
18 have hers in front of me --
19 THE COURT: So his -- his language is "no, I cannot
20 be fair and impartial."
21 MS. RADOSTA: No.
22 MS. SUDANO: His language is, "No, my concern would
23 be the children."
24 THE COURT: Okay.
25 MS. RADOSTA: But the answer -- the question is, can

1 you promise to be fair and impartial --

2 THE COURT: Okay.

3 MS. RADOSTA: -- and his answer was "no."

4 THE COURT: Okay.

5 MS. RADOSTA: And, I'm sorry, I don't have Ms.

6 Dolan --

7 THE COURT: But how --

8 MS. RADOSTA: -- in front of me.

9 THE COURT: -- do you reconcile the fact that he --

10 that he said it right here to us that, yes, I can.

11 MS. RADOSTA: Judge, my -- my point is the -- the

12 language in Preciado says, they must -- I'm sorry, but the

13 language in Preciado is they must be unequivocal in their

14 ability -- in their impartiality.

15 THE COURT: It sounds to me that they -- that he was

16 here, when he spoke --

17 MS. RADOSTA: But our -- but they were --

18 THE COURT: -- to us --

19 MS. RADOSTA: -- sworn in the -- in the Jury

20 Questionnaire. So are we just discounting what they said in

21 the Jury Questionnaire?

22 THE COURT: No, no, no, no, no, no, no. I think

23 that there was questions about it because it didn't -- it

24 wasn't unequivocal. In my opinion when -- when you say --

25 that's why I asked to explain what was said. That's not

1 unequivocal to me. And so you have additional times to
2 question him and you chose not to.

3 Then you say, well, I'm just relying on what they
4 said before when they -- in here we spent three days with
5 them, one day with Mr. Hoolapa, multiple days -- the whole
6 time with Mr. Wohletz, the whole time with Ms. Dolan and we --

7 MS. RADOSTA: I -- I -- you're saying that I did not
8 question them, Judge. I did --

9 THE COURT: No, but they didn't say anything that
10 was consistent with what you're saying they're saying in their
11 questionnaire. Not a single one of them agreed with what
12 you're saying just now that --

13 MS. RADOSTA: But doesn't --

14 THE COURT: -- they were unequivocal. It sounded to
15 me in here they were clearly unequivocal that they could be
16 fair.

17 MS. RADOSTA: Then what -- I mean, but what does
18 that mean about the answer in the Jury Questionnaire then?
19 It's just --

20 THE COURT: That -- no, no --

21 MS. RADOSTA: -- disregard it so --

22 THE COURT: -- I'm not disregarding it, Ms. Radosta.
23 Do not put words in my mouth.

24 MS. RADOSTA: I'm asking, Judge.

25 THE COURT: Now, listen to me. When you have a

1 question that doesn't sound that it's unequivocal that it
2 could be equivocal --

3 MS. RADOSTA: Um-hum.

4 THE COURT: -- then you give them an opportunity, as
5 I did, to address it.

6 MS. RADOSTA: Okay.

7 THE COURT: And you chose not to. But they answered
8 the question anyhow that gives me the answer that they are
9 unequivocal about the fact that they can be fair. That's what
10 makes no sense to me.

11 MS. RADOSTA: I -- I --

12 THE COURT: They have a questionnaire that doesn't
13 answer the question completely because you guys spent days on
14 questioning in that area.

15 MS. RADOSTA: Yeah.

16 THE COURT: If -- if not, we just accept those and
17 let -- and go from there. But no, there's questions there
18 because they don't answer them completely. When that -- when
19 they're saying certain things like they've said here was just
20 read to me, leads me to believe that they're not answering the
21 question -- well, you even asked many of them, it doesn't
22 sound like you understood the question, and they were
23 answering, yes.

24 But those ones there, you didn't even touch on.

25 But --

1 MS. RADOSTA: I did --

2 THE COURT: -- I know Dolan you spent a lot of time
3 on her. She didn't waiver at all from the fact that she could
4 be fair and impartial.

5 MS. RADOSTA: I -- my point is simply, the answer on
6 the Jury Questionnaire is part of the consideration, Judge.
7 It just is, in my opinion.

8 THE COURT: Okay.

9 MS. RADOSTA: And based on the case law that -- as
10 soon as they answer that they're not sure if they can be fair
11 and impartial that calls into question whether or not they're
12 equivocal or unequivocal.

13 THE COURT: Okay.

14 MS. RADOSTA: So --

15 THE COURT: I --

16 MS. RADOSTA: -- that's my position.

17 THE COURT: I understand. But the reason why I left
18 it -- left it, I didn't agree with your position at times --

19 MS. RADOSTA: Um-hum.

20 THE COURT: Because it -- it doesn't do that. It
21 questions whether -- what -- what their -- it doesn't answer
22 anything. And so you give them an opportunity to ask them the
23 questions now, and no one -- and you didn't do anything. But
24 I will tell you in that area, all three of them were very
25 clear that they could consider the evidence, that they'd be

1 fair, some of it's disturbing; all this is disturbing. Every
2 one of them was saying that.

3 But they would -- they would be fair. They would
4 -- they would weigh the evidence, they would use only the
5 evidence that was here. They would follow the instructions of
6 the Court. That sounds unequivocal to me.

7 MS. RADOSTA: My only -- the -- my only other point,
8 Your Honor, is you've said multiple times that I did not ask
9 them, and that is incorrect. I asked -- for sure I brought
10 out Ms. Dolan's and Mr. Wohletz's Jury Questionnaires and
11 asked them about those answers.

12 THE COURT: I know, but they -- they never stayed
13 with that answer. They never agreed with that answer, not any
14 of them. They were all in -- and the answer --

15 MS. RADOSTA: Okay.

16 THE COURT: -- you're saying. The answer you're
17 saying is that it says that they were -- they were -- they
18 couldn't --

19 MS. RADOSTA: That's --

20 THE COURT: -- be fair and impartial is what you're
21 saying. All three of them said, no, absolutely not. As a
22 matter of fact, I remember -- I think Ms. Dolan was very
23 direct about that and her answers were absolutely, I could
24 consider all this and I would be fair and impartial.

25 And -- and then you didn't raise it again. And when

1 I asked for -- to -- to pass for cause that you -- you did.
2 You passed these for cause except for two; Janice Brand --
3 MS. RADOSTA: And when we --
4 THE COURT: -- and Tanisha Turner.
5 MS. RADOSTA: And when --
6 THE COURT: So --
7 MS. RADOSTA: And when we realized that we did not
8 raise them earlier --
9 THE COURT: Um-hum.
10 MS. RADOSTA: -- we felt we needed to make a
11 record --
12 THE COURT: Okay. You --
13 MS. RADOSTA: -- now, Judge.
14 THE COURT: You -- all right, well, you've made your
15 record. So get the jury back in.
16 MS. RADOSTA: Actually, Judge, no, we -- we need to
17 make a Batson challenge as well, two different Batson
18 challenges. The State struck 326, Ms. Dickens, and it's our
19 opinion that she is a protected class. She's African-
20 American.
21 And given the fact that she barely spoke during the
22 course of our -- of our three days here, Judge, we --
23 THE COURT: Okay.
24 MS. RADOSTA: -- can't really find any reason why
25 the State would strike her other than for the fact that she is

1 African-American.

2 THE COURT: Okay.

3 MS. RADOSTA: Beyond that, Judge, we are also making
4 a Batson challenge for the three women; three of the six
5 peremptory challenges that the State made were for women.
6 They did three of the six. And the three were Ms. Dickens,
7 Badge 326, Ms. Brand, 111, and Ms. Desiree Sanchez, 120.

8 Beyond what I've already said with Ms. Dickens, Ms.
9 Sanchez is similar. She really didn't speak up much at all.
10 There is no obvious reason why she would not be a qualified
11 member of the -- sorry, not qualified member -- but an
12 adequate member of the jury.

13 And Ms. Brand, she's also of the protected class.
14 She did talk a lot, but in the end, Your Honor, she said that
15 she could be -- she would presume innocent until proven
16 guilty. I don't know what the State could possibly have a
17 reason for not wanting her on the jury when she says something
18 like that.

19 And said that she would follow the Court's orders as
20 well. Oh, and I apologize, Your Honor, I misspoke. They also
21 struck another woman, Ms. Muro, was one of the alternates. So
22 they had seven -- they used seven total challenges and four of
23 them were women.

24 Beyond that, also, I believe Ms. Muro and Ms.
25 Sanchez are also of another protected class being Hispanic, I

1 believe. I'm not 100 percent sure with Ms. Muro. And so,
2 with that, Your Honor --

3 THE COURT: Okay. So your position is a Batson
4 challenge is that they struck an African-American.

5 MS. RADOSTA: Um-hum.

6 THE COURT: That's your first one?

7 MS. RADOSTA: Yes.

8 THE COURT: Can you tell me how in any regards
9 whatsoever that there is any showing of any systematic
10 exclusion of any -- of this African-American, someone that's
11 -- or anybody in that regard that's part of a protected
12 class --

13 MS. RADOSTA: There is --

14 THE COURT: -- or we --

15 MS. RADOSTA: -- we don't have to show systematic.
16 We -- the excusal of even one member of a protected class,
17 according to law, Judge, is essentially a -- you disagree,
18 apparently? I -- I --

19 THE COURT: I'm just -- I'm -- I just don't know it
20 that way. I don't -- there's a standard you have to meet.
21 You have to show that they're a protected class.

22 MS. RADOSTA: Um-hum.

23 THE COURT: Would accept that African-American is a
24 protected class.

25 MS. RADOSTA: Right.

1 THE COURT: Then you have to show that there's a
2 systematic exclusion of that protected class. If you -- if
3 you do that then the State has to be able to explain, give me
4 a race neutral reason for that.

5 MS. RADOSTA: Um-hum. And, Your Honor, the case law
6 that I have in front of me is -- is Watson v. State, 130
7 Nevada, Advanced Opinion 76, that the defendant is not
8 required to show a pattern of discriminatory strikes because,
9 quote, "The exclusion of even one venire member based on
10 membership in a recognizable group is a Constitutional
11 violation." That's Nevada case law.

12 THE COURT: The striking of one --

13 MS. RADOSTA: Yep. The exclusion of even one --

14 THE COURT: Let me -- let me read -- do you have the
15 case or is this something you've just written down?

16 MS. RADOSTA: 130 Nevada --

17 THE COURT: Let me -- let me see it.

18 MS. RADOSTA: -- Advanced Opinion 76. This is just
19 the -- actually, I might actually have the case. Give me a
20 second, Judge.

21 No, this is not -- this -- sorry, Judge, I did not
22 grab the case. I just have the -- the cite.

23 THE CLERK: What's the site, 130 --

24 THE COURT: 130 Nevada --

25 MS. RADOSTA: 130 Nevada Advanced Opinion 76. There

1 is also 335 P.3d 157. That's a 2014 case.

2 THE COURT: Pacific 3rd what?

3 MS. RADOSTA: Pacific 3rd 157.

4 THE COURT: And what's the name of the case?

5 MS. RADOSTA: Watson v. State.

6 THE COURT: Okay.

7 (Pause in the proceedings)

8 THE COURT: All right. I'll read from the case, Ms.
9 Radosta.

10 MS. RADOSTA: Um-hum.

11 THE COURT: It says that, Where there is no pattern
12 of strikes against members of a targeted group to give rise to
13 an inference of discrimination, the opponent of the strike
14 must provide other evidence sufficient to permit an inference
15 of discrimination based on membership in a targeted group. In
16 other words, the mere fact that the State used a peremptory
17 challenge to exclude a member of the cognizant group is not
18 standing alone sufficient to establish a prima facie case of
19 discrimination under Batson's first step. Something more is
20 required. Brightline rule that peremptory challenge used
21 against a member of a racially cognizant group is sufficient
22 to establish a prima facie case under Batson because such a
23 rule would be inconsistent with Batson as it would negate this
24 part of the analysis and require a prosecutor to provide an
25 explanation every time a member of a racially cognizant group

1 is peremptorily challenged and would be inconsistent with what
2 Washington court and other courts have held.

3 The one fact -- this is the -- citing the Valdez
4 Lopez case -- the one fact supporting the -- and then this
5 Defendant's Batson claim was the juror status and sole black
6 perspective juror. Okay. More was required. Noting that a
7 defendant is not required to show a pattern in order to make
8 out a prima facie showing of discrimination but that the
9 absence of a pattern is significant where the defense provided
10 no other basis for inferring discriminatory intent. Aside
11 from a pattern of strikes against members of a targeted group,
12 circumstances that might support an inference of
13 discrimination include, but are not limited to, the
14 disproportionate effect of peremptory challenges, the nature
15 of the proponent's questions and statements during voir dire,
16 desperate treatment of members of the targeted group, and
17 whether the case itself is sensitive to bias.

18 Okay. All these relevant circumstances raise an
19 inference of discrimination will depend on factors such as the
20 attitude and behavior of the challenging attorney and the
21 prospective juror's manifested -- manifested during voir dire.
22 Impacted the government's challenge on a composition of jury
23 and disparate treatment -- well, that's your Martinez case --
24 also observes that courts may also consider whether a
25 cognizant group has been eliminated from the jury altogether,

1 was substantially unrepresented or in the case itself was
2 sensitive to bias.

3 Watson suggests that the number of peremptory
4 challenges that the State used -- and then it goes on -- to
5 remove women constitutes a pattern of strikes and gives rise
6 to an inference of gathered gender bias discrimination and
7 therefore establishes a prima facie case of gender
8 discrimination. However, he offers no support -- no
9 supporting authority or analysis.

10 In a case involving a Batson claim, based on gender
11 discrimination, this Court observed that when a significant
12 proportion of peremptory challenges exercised by the State is
13 used to remove members of a cognizant group it tends to
14 support a finding of purposeful discrimination. That's the
15 Libby [phonetic] case.

16 Although there is no magic number of challenging
17 jurors which shifts the burden to the government to provide a
18 neutral explanation of its actions, this Court has concluded
19 that the use of seven of nine peremptory challenges to remove
20 female venire members established a prima facie case of
21 discrimination based on gender.

22 Their -- so then they had to given an explanation.

23 There are some flaws with the Libby's method of
24 determining whether there was a pattern of strikes against
25 members of a targeted group that gives rise to an inference of

1 discrimination. Libby tallies the number of peremptory
2 challenges used against members of the targeted group to
3 determine whether there is a pattern of strikes against
4 members of that group. The first problem with the method is
5 that the raw number of peremptory challenges used against
6 targeted group members is meaningless, without some point of
7 reference.

8 It says, Libby did provide one point of reference;
9 the total number of peremptory challenges used by the State.
10 That point of reference has little meaning, however, without
11 additional information such as the number of targeted group
12 members remaining in the venire after the for cause
13 challenges, five peremptory challenges against targeted group
14 members might be dispositive if only five such individuals had
15 previously populated the jury venire -- the venire. But they
16 might be entirely unremarkable if virtually the entire venire
17 had consisted of people in that same group.

18 Although two of the cases discussed in Libby
19 included information about this additional point of reference,
20 seven of defendant's eight strikes used against male jurors,
21 and when -- when defendant sought to use final peremptory
22 strike to remove another male juror, there were only two male
23 jurors in the jury box, and one remaining in the venire.
24 Strikes exercised against the only African-Americans on the
25 panel, this Court did conclude -- include that information

1 with respect to Libby's venire. The second problem with the
2 method used in Libby is that it does not complete its task
3 because it does not tell us how many such peremptory
4 challenges constitute a prima facie case. The flaw can lead
5 to inconsistent decisions.

6 So --

7 MS. RADOSTA: I am still maintaining our Batson
8 challenge, Judge.

9 THE COURT: Okay.

10 MS. RADOSTA: We've read the case differently.

11 THE COURT: So you challenge -- you challenge the
12 African-American.

13 MS. RADOSTA: Yes.

14 THE COURT: State, do you want to respond?

15 MS. SUDANO: Yes, Your Honor. We struck Ms. Dickens
16 who does identify as African-American. There are four
17 African-Americans on the jury that self-identified, and then
18 there was Mr. Johnson-George who was also on the panel and
19 didn't make it onto the jury because the State had waived.
20 But as it sits, we have four African-Americans on the jury.

21 With that type of number, I don't believe that there
22 is any sort of pattern of discrimination that would warrant
23 moving on to Step 2 of the Batson analysis.

24 THE COURT: Okay. Now, address the --

25 MS. RADOSTA: I'm sorry, I --

1 THE COURT: -- the female.

2 MS. RADOSTA: -- just -- oh yeah, sorry.

3 THE COURT: Okay. All right, with regards to that

4 I'm going to deny your challenge. So now, move to the -- your

5 challenge with regards to the females.

6 MS. SUDANO: So the challenge is that we struck

7 three women, I believe, with our --

8 MS. RADOSTA: Four.

9 MR. LOPEZ-NEGRETTE: Four.

10 MS. SUDANO: -- four, including the alternate.

11 MS. RADOSTA: Yes.

12 MS. SUDANO: So, four out of seven; three from the

13 main panel and then one for the alternate. The defense, I

14 would note, struck five women, and four men, with their

15 challenges, so they actually did strike more women than we

16 did. The ultimate makeup of the jury at this point is five

17 women and seven men on the actual jury, one woman, three men,

18 as far as the alternates.

19 The strikes that the State used on women are

20 consistent with the numbers of women within the panel. It's

21 not as though we used all of our strikes on women. It's not

22 as though when we were striking women we ended up with a panel

23 that doesn't have any women left on it.

24 So I don't think that there is any pattern of

25 discrimination there.

1 THE COURT: Okay. All right. With regards to the
2 challenge as to gender based, I'm going to deny the Batson
3 challenge with that as well; okay?

4 MS. RADOSTA: Uh --

5 MS. SUDANO: And then they also challenged the
6 Hispanic strikes.

7 THE COURT: They challenged Hispanic.

8 MS. SUDANO: So --

9 THE COURT: I guess, Marilyn -- I guess -- Marilyn
10 Muro.

11 MS. RADOSTA: And Ms. Sanchez.

12 THE COURT: And Ms. Sanchez.

13 MS. RADOSTA: Desiree Sanchez. To be honest, Your
14 Honor, just to put it out there, I did not double check if Ms.
15 Muro identified as Hispanic or not, but Ms. Desiree Sanchez
16 absolutely did.

17 MS. SUDANO: Ms. Sanchez actually identified as
18 Caucasian or White on her Jury Questionnaire, or on the
19 demographic information that we had within the list.

20 And then Ms. -- Ms. Muro was "other race".

21 THE COURT: Okay. All right. So with respect to
22 that, we can't -- I can't make a determination that there was
23 -- it was even challenging Hispanic.

24 MS. SUDANO: And I would just also note that there
25 were potentially three other individuals that were Hispanic on

1 the panel. Those were other individuals that identified as
2 "other race" however in the demographic information that we
3 got.

4 THE COURT: Okay. So with respect to that, I'm
5 going to deny the challenge as well.

6 Okay. All right. So we have -- anything further?

7 MS. RADOSTA: No.

8 THE COURT: All right. Bring the jury in.

9 THE MARSHAL: All rise for the prospective jury.

10 (Inside the presence of the prospective jury)

11 THE COURT: All right. We're back in the presence
12 of the jury in Case No. C-311453, State of Nevada versus
13 Christopher Sena. I'd like the record to reflect the presence
14 of the defendant, his counsel, as well as the State and their
15 counsel.

16 Will the parties stipulate to the presence of the
17 jury venire?

18 MR. SWEETIN: Yes, Judge.

19 MS. RADOSTA: Yes, Judge.

20 THE COURT: All right. Ladies and gentlemen, if you
21 hear your name called you will be part of my jury. And so you
22 need to stay. If you don't hear your name called, then you're
23 going to be excused. And I want to extend my thank you to you
24 now, and welcome you back, if you want to watch the
25 continuation of the trial.

1 And also, welcome you if you have any questions of
2 the Court, if you're ever down in the courthouse and you need
3 any assistance with navigation with the Court, my court is
4 always open and you're always welcome to come and ask and if
5 you need any -- I can't represent you or anything like that,
6 but I can certainly help you get around the courthouse; okay?

7 So if you hear your name, you are part of my jury.

8 Juror No. 1 is Mauricio Molina.

9 Juror No. 2 is Siani Morris. Juror No. 3 is Gregory
10 McGhee. Juror No. 4 is Michelle Howell. Juror No. 5 is Robyn
11 Dolan. Juror No. 6 is April Ruelas. Juror No. 7 is Luis
12 Lopez. Juror No. 8 is Cecilia Garcia. Juror No. 9 is Duayne
13 Hoolapa.

14 JUROR NO. 9: Hoolapa.

15 THE COURT: Juror No. 10 is Edwards Wells-Thompson.
16 Juror No. 11 is Tanisha Turner. Juror No. 12 is Frank
17 Fragale. Juror No. 13 is Brady Gall. Juror No. 14 is Brian
18 Wohletz. Juror No. 15 is Chase Albright. Juror No. 16 is
19 Adonis Kittredge.

20 So all of you that your name wasn't called, you're
21 excused. And you can discuss the case with whoever you want
22 to talk to about it; okay? So we'll be at ease while you all
23 exit the courtroom; okay?

24 Not everybody. Everybody's name that was called;
25 stay. Aren't you Mr. Wohletz?

1 PROSPECTIVE JUROR NO. 256: No, Rosenfield.
2 THE COURT: Oh, I'm sorry. I'm sorry.
3 (Excused prospective jurors exit at 5:55 P.M.)
4 (In the presence of the jury)
5 THE COURT: All right. Okay. I'm going to go ahead
6 and put you in the seats that you're going to be in, and then
7 we're going to take our evening break. I'll swear you in
8 tomorrow when you come in and then we'll -- we'll start the --
9 the case; okay?
10 So, Mr. Molina, do you want to move down one seat to
11 your left? Ms. Morris, move one seat to your left. Mr.
12 McGhee, I guess it'd be two seats to your left. Ms. Howell,
13 two seats to your left. Ms. Dolan, down next to Ms. Howell.
14 Then Ms. Ruelas, you're right -- you're right in the right
15 spot. Mr. Lopez, next to her.
16 And then one additional; Cecilia Garcia?
17 JUROR NO. 8: Yes.
18 THE COURT: Right next to him; okay?
19 JUROR NO. 8: Um-hum.
20 THE COURT: Then down here to the far left will be
21 Mr. Hoolapa. And then Edwards Wells-Thompson, next to Mr.
22 Hoolapa. Tanisha Turner next to Mr. Thompson. Frank Fragale,
23 right there next to Ms. Turner. Mr. Gall, next to Mr.
24 Fragale. Mr. Wohletz, next to Mr. Gall. Mr. Albright, next
25 to Mr. Wohletz. And Mr. Kittredge next to Mr. Albright.

1 Okay. All right. When we get started, what I'll
2 probably do is have you all move down at least to the end
3 here, just so you're closer to the witness stand. But you are
4 my jury in this matter.

5 I am going to admonish you that you are not to
6 discuss this matter or converse amongst yourselves or with
7 anyone else on any subject connected with this trial or read,
8 watch or listen to any report or commentary on the trial or
9 any person connected with this case, by any medium of
10 information, including without limitation to newspapers,
11 television, the Internet or radio. You're further admonished
12 not to form or express any opinion on any subject connected
13 with this case until the case is finally submitted to you.

14 Ladies and gentlemen, if -- if for some reason
15 during the case as it's going you are seeing reporters, either
16 with the newspapers or with media, and they try to approach
17 you and talk to you, please let me Marshal know. Do not talk
18 to them. And I'm just -- that's my admonition.

19 And then do not watch anything that you think may
20 have something to do with this. Do not read anything that you
21 think may have -- do not do any investigation on your own. Do
22 not look at any items of interest. Do not try to use a
23 dictionary, your -- your phone or anything like that to look
24 up terms. If you -- if we go throughout this process -- I'm
25 going to charge you tomorrow. I'll give you a better

1 understanding of how the trial actually goes and what you are
2 going to be given and what you're going to be able to do and
3 what you can't do; okay?

4 Tomorrow, you might want to probably bring a pillow
5 or a jacket or something for you, if you think that that's
6 what you need for -- and you're my jury. Then what you're
7 going to be seated in here. These chairs are all going to be
8 gone. So if you -- I mean, some of you were sitting down
9 here, so now you know how much more comfortable the seats are.

10 So bring something if you want to drink, bring it
11 with you, as long as you have a lid on it. I've noticed some
12 of you are doing that already. And if you have a snack or
13 anything you can do that as well.

14 I will require you to turn your phones off though
15 once we get started.

16 All right. We're going to get started tomorrow at
17 9:00 o'clock. Meet outside. My Marshal will collect you. Do
18 not come in the courtroom, just like we are. My Marshals is
19 also going to give you a badge that you'll be change -- you'll
20 be changing out the one that you have now. Okay?

21 Do you have any questions about what I've just
22 indicated to you?

23 UNIDENTIFIED JUROR: Do we change our parking?

24 THE COURT: My Marshal will talk to you about that.

25 UNIDENTIFIED JUROR: Okay.

1 THE COURT: I think there is a different spot for
2 you; okay? Ms. -- Ms. Turner?

3 JUROR NO. 11: So it is four to six weeks that we're
4 here?

5 THE COURT: Well, that would include what just
6 happened. You've been here now a week.

7 JUROR NO. 11: Okay.

8 THE COURT: And -- and -- we'll see.

9 JUROR NO. 11: All right.

10 THE COURT: I mean, I anticipated roughly two weeks
11 to get the jury. We got you within a week. And now it just
12 depends on the -- on the extent of the evidence. And, you
13 know, depending on who you talk to, it may vary on how much,
14 you know, how much time it's going to really take.

15 I try to move these pretty quick when we're doing
16 these cases. I will tell you there's going to be some time
17 that I need to take some breaks for some things that we're
18 doing outside the courtroom, not necessarily with this case.
19 I'll let you know. Like tomorrow, like I told you today, I
20 had to go to an event at 11:00. Tomorrow, I have one at 2:00.
21 And I imagine it will probably be about a -- about an hour, I
22 mean, kind of like we'll get -- do you know what I'm talking
23 about, Mr. Sweetin --

24 MR. SWEETIN: I'm sorry?

25 THE COURT: -- the one for -- for -- it's for

1 Lynn --

2 MS. SUDANO: Oh.

3 THE COURT: -- Robinson?

4 MR. SWEETIN: Oh, yeah. Are you going to that? You
5 don't know?

6 MS. RADOSTA: I --

7 THE COURT: Okay.

8 MS. RADOSTA: -- honestly, I -- I'm not sure.

9 THE COURT: Yeah.

10 MS. RADOSTA: So I hadn't really anticipated.

11 THE COURT: I know. Okay. So it's someone else
12 that we -- it's been in our profession for 30 years or so.
13 And so tomorrow at 2:00 they're doing a going away thing for
14 her in the courthouse, so I don't have to go very far. So it
15 will probably -- what I'll do is I'll give you all a lunch.
16 I'll talk to you about that when we're moving along to see --
17 see if you want to take a lunch before then. If not, maybe
18 I'll try to get it around that time so you can take the lunch
19 the same time we're gone.

20 I'll give you breaks. Let me know if you need a
21 break during these proceedings. I mean, some -- I try not to
22 break when we have witnesses on the stand to -- to get through
23 that. And so in the meantime, if we're in the middle of it
24 and you guys need a break, let me know.

25 If you need a break anytime, just let me know; okay?

1 I try to take them about every hour and a half.

2 All right. Mr. McGhee?

3 JUROR NO. 3: Well, in regard to that, when I talked
4 to you about being a Type 2 diabetic --

5 THE COURT: Uh-huh.

6 JUROR NO. 3: -- would it be better if I was like
7 towards the end if I had to stand up, instead of standing up
8 right in the middle of everybody right now?

9 THE COURT: That's fine. That's fine with me. We
10 just -- you're just in the order that we've got you set up.

11 JUROR NO. 3: Oh, okay.

12 THE COURT: It's really up to you, whatever you
13 think would be, you know, if you want to sit down here on the
14 end, that's fine, or on -- on that end --

15 JUROR NO. 3: Okay.

16 THE COURT: -- that's -- that's fine. Okay?

17 JUROR NO. 3: Okay.

18 THE COURT: All right. Anyone else?

19 All right. You all have a good night. And thank
20 you for waiting. You gave me an extra hour here. I'll see
21 you all tomorrow at 9:00 o'clock; okay? All right.

22 (Jury exits at 6:02 P.M.)

23 (Outside the presence of the jury)

24 THE COURT: All right. We're outside the presence
25 of the jury. Before we leave for the evening, in a more

1 cursory reading of this Watson case, I'm going to give the
2 State an opportunity, if they'd like. The -- there's the
3 steps you make in Batson. And -- and it's incumbent upon the
4 individual making the challenge, or the side making the
5 challenge, to meet -- or have a threshold -- or meet a
6 threshold.

7 And in Watson, they specifically addressed that the
8 -- in that case they weren't even considering anything further
9 because there was nothing made out to support that there was -
10 - that it met the first step, which I had -- which I talked
11 about.

12 They also indicated, however, because the State
13 chose to do a -- a -- make a -- a race neutral reasoning or a
14 -- or a neutral reason that they accepted it, they say that it
15 doesn't make it moot. They still look at the analysis. So
16 they say out of an abundance of caution.

17 So it's really up to the State, if you wish to make
18 any further representation as to a -- for the -- for the first
19 one, a race neutral reason for the one with the female, a
20 gender neutral reason. And I imagine you've already made the
21 record clear with regards to the Hispanic.

22 So it's --

23 MS. SUDANO: Court's indulgence.

24 (Deputy District Attorneys conferring)

25 MR. SAVAGE: And, Your Honor, I think that the

1 record stands on its own. I don't know that we need to make
2 an additional record. However, if Your Honor is requesting
3 it, I am happy to do so.

4 THE COURT: I'm -- I'm not. I'm just -- here it
5 says that -- here's what it says, "When the trial court
6 expressly states that it does not believe a prima facie case
7 has been made, and then invites the prosecution to justify its
8 challenges for the record on appeal, the question whether a
9 prima facie case has been made is not mooted, nor is it -- nor
10 is a finding of a prima facie showing implied."

11 MS. SUDANO: Sure.

12 MR. SWEETIN: If you're not requesting, we -- we
13 would prefer not to volunteer, because we don't think -- we
14 feel comfortable that that first step was not met.

15 THE COURT: Okay. All right. Okay.

16 MR. SWEETIN: Thank you, Judge.

17 THE COURT: We're off the record.

18 (Court recessed at 6:05 P.M., until Friday,
19 February 1, 2019, at 9:03 A.M.)

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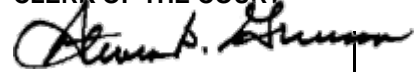
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

Julie Bond

VERBATIM DIGITAL REPORTING, LLC



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-15-311453-1
)	
Plaintiff,)	DEPT. NO. XIX
)	
v.)	
)	
CHRISTOPHER SENA,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 1, 2019

**RECORDER'S TRANSCRIPT OF HEARING
JURY TRIAL - DAY 5**

APPEARANCES:

FOR THE STATE:	JAMES R. SWEETIN, ESQ. Chief Deputy District Attorney
	MICHELLE L. SUDANO, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	VIOLET R. RADOSTA, ESQ. DAVID E. LOPEZ-NEGRETE, ESQ. Deputy Public Defenders

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 1, 2019

2 [Case called at 9:03 A.M.]

3 (Outside the presence of the jury.)

4 THE COURT: So, okay. We're on the record in the
5 case of State of Nevada versus Christopher Sena in C-311453.

6 I'd like the record to reflect the presence of the
7 defendant, his counsel, as well as the State, and their
8 counsel. We're outside the presence of the jury.

9 Is there anything that needs to be put on the
10 record before we bring the jury in?

11 MR. LOPEZ-NEGRETTE: Court's indulgence.

12 (Counsel conferring)

13 MS. RADOSTA: Your Honor, it's come to our
14 attention that in the State's opening, they have several
15 pieces of evidence built into their PowerPoint, photographs,
16 quotes from statements, things of that nature.

17 I don't know if they have any actual clips from the
18 videos, but I thought that that was a possibility that they
19 might show small parts of it. And we would be objecting to
20 any of those being part of their PowerPoint because none of
21 that evidence at this point has been admitted.

22 So any photographs, any statements, or quotes from
23 statements or anything of that nature, we would be objecting
24 to them as part of their PowerPoint.

25 THE COURT: Mr. Sweetin.

1 MR. SWEETIN: Yeah, and first of all, the State's
2 not playing any of the pornography in their opening.

3 However, I just went through with Mr. Negrete
4 exactly what the State is going to be showing and it's going
5 to include some photos of the children when they were
6 children, it's going to include photos of the defendant, as
7 well as the co-defendants, Deborah and Terrie Sena. There's
8 also photos of the house they lived in, a diagram of the
9 house, as well as some photos of the interior of the house, a
10 safe that a flash drive in which the pornography comes off
11 of, that is going to be there as well.

12 The defendant gave a statement in this case, and
13 there was also e-mails that the defendant sent to Deborah
14 Sena. The State expects that -- has good faith belief that
15 that is going to come in, and therefore, the State is going
16 to make reference to things that were said in both statement
17 and the e-mails and we'll quote some statements from the
18 e-mails and the statement.

19 That's the State's intention. The State -- this is
20 opening statement. It's not evidence. The State has a good
21 faith belief that all that will come into evidence. The
22 State submit it's all fair game.

23 MS. RADOSTA: Additionally, one other thing that I
24 was told was in State's opening, are mug shots of Deborah,
25 Terrie, and my client, which we would be objecting to just

1 the suggestiveness of those particular photos. And
2 additionally, that they have not been previously admitted.

3 Regarding the e-mails, I appreciate the State feels
4 that they have a good faith belief this those are going to
5 come in. I think there is an issue potentially that the
6 admission of any e-mails in the State's case. But beyond
7 that, we are at opening, Judge, and these -- while the State
8 may have a good faith belief that these things are going to
9 be admissible, they are not yet -- they have not yet been
10 admitted.

11 THE COURT: Okay.

12 MS. RADOSTA: And it is entirely possible that any
13 number of the things that the State puts up during their
14 PowerPoint may not come to be admitted during the course of
15 this trial, and then the jury will have been shown evidence
16 that was never admitted during the trial.

17 THE COURT: Okay.

18 MS. RADOSTA: And I think that that's a potential
19 issue down the road.

20 THE COURT: All right. With regards to the mug
21 shots that they're saying, is it Exhibits 102, 103, and 104
22 that's going to be proposed? That's what these --

23 MR. SWEETIN: That's correct, Judge. And they're
24 not mug shots.

25 THE COURT: Okay.

1 MR. SWEETIN: They are pictures of the individuals.
2 There's no way of telling from those pictures, the State
3 submits, that they're mug shots.

4 THE COURT: Yeah. Okay. All right. I trust that
5 the State understands the position that they are always
6 facing when they're doing opening statements, much like the
7 defense, is that if they do have a good faith belief that it
8 will be admitted, and they can present it.

9 And if we get to the point where it's not admitted,
10 then we'll deal with that at that point. That may cause some
11 other action, maybe even to the point of a mistrial, I don't
12 know.

13 I know that the defense is posing this because they
14 want to avoid that.

15 MS. RADOSTA: Um-h'm.

16 THE COURT: But at this point in time, I don't
17 believe, based on the representations of the State, that
18 anything that they're going to be putting in their opening is
19 going to be something that would be not admitted or something
20 that they don't believe will be admitted.

21 So at this point in time, your objection's noted.
22 Okay?

23 MR. SWEETIN: Thank you, Judge.

24 THE COURT: All right. Are we ready? Ms. Radosta,
25 we ready?

1 MS. RADOSTA: Sorry, Your Honor. We were just
2 debating a point.

3 THE COURT: Okay.

4 MS. RADOSTA: At this point, Judge, I think I'm
5 satisfied with the record. There are -- as I stated earlier,
6 I think there are going to be some issues with some of the
7 pieces of evidence that the State has in their opening, but
8 we've made our objection.

9 THE COURT: Well, your objection earlier was about
10 photos or video of -- from this case. What's been
11 represented to me, the photos don't necessarily have anything
12 with regards to pornographic images, prejudicial images in
13 that regard, and they're indicating they're not providing any
14 of the video as part -- so --

15 MS. RADOSTA: Just for the record, he indicated
16 that there was photos of the safe where the flash drive was
17 located. That was based on a search warrant, which at this
18 point in time has not been -- there's been no testimony as to
19 whether or not that was a valid search warrant or not. So
20 there could be a potential issue there.

21 Regarding any statements from my client, he was
22 under -- in custody at the time of that statement being
23 given. There has been no testimony thus far that he was
24 properly and validly read his Miranda rights and waived those
25 Miranda rights. So there could potentially be an issue

1 there.

2 Regarding the e-mails that purportedly are from my
3 client, there has been thus far no proof provided that those
4 e-mails directly came from my client. And so there could be
5 an issue there. That's where we are --

6 THE COURT: Okay.

7 MS. RADOSTA: That's kind of where we're at, Judge,
8 so --

9 THE COURT: All right. I -- there always could be
10 an issue, I understand that. That's why I'm saying, I trust
11 the State as -- understands their obligation and whatever
12 effect it may if we get to a point where it's not admitted.

13 MS. RADOSTA: Okay.

14 THE COURT: Okay? All right. So get the jury in.

15 (Pause in the proceedings)

16 THE MARSHAL: All rise for the purpose the jury.

17 (Inside the presence of the jury.)

18 THE COURT: All right. Everybody go ahead and have
19 a seat. Good morning, everyone.

20 THE JURY: Good morning.

21 THE COURT: This is the continuation of the jury
22 trial in the case of State of Nevada versus Christopher Sena
23 in C311453.

24 I'd like the record to reflect the presence of the
25 defendant, his counsel, as well as State, and their counsel.

1 If you hear your name, answer by saying "here" or
2 "present." All right?

3 (COURT CALLS ROLL OF THE JURY)

4 THE COURT: All jurors have answered to the call.
5 Will the parties stipulate to their presence?

6 MS. RADOSTA: Yes, Your Honor. Sorry, I was
7 just --

8 THE COURT: State?

9 MS. SUDANO: Yes, Your Honor.

10 MR. SWEETIN: Yes, Your Honor.

11 THE COURT: Okay. Mr. McGhee.

12 JUROR NO. 3: Yes.

13 THE COURT: Do you want to move now or are you okay
14 where you're at?

15 JUROR NO. 3: I'm actually fine.

16 THE COURT: Okay. If you need to, just let us
17 know. There's multiple seats that are open and -- all right?
18 Okay.

19 So ladies and gentlemen, at this time, since you
20 are my jury in this matter, you need you all to stand, raise
21 your right hand, and I'm going to have my Clerk administer
22 the oath.

23 (THE CLERK SWEARS THE JURY)

24 THE CLERK: Thank you. Please be seated.

25 THE COURT: All right. Okay. Ladies and

1 gentlemen, since you are my jury now, you've been sworn. I
2 need to make some instructional remarks in this matter. I
3 told you last night, I kind of explain to you how this
4 proceed, give you some understanding of what you'll be doing
5 and your role.

6 What I'm about to say now is intended to serve as a
7 general introduction to this trial. It's not a substitute
8 for the detailed instructions that I'll give you on the law
9 at the close of this case before you consider your verdict.

10 This is a criminal case commenced by the State of
11 Nevada, which I have referred to as "the State", against
12 Christopher Sena. The case is based on an Third Amended
13 Information.

14 I'm going to at this time, have my Clerk read the
15 Third Amended information to you. Ladies and gentlemen,
16 usually she stands when she reads it. Out of no disrespect
17 to you, I'm going to ask that she just sit and read it.
18 Okay? All right. Okay.

19 THE JURY: Yes, Your Honor.

20 THE COURT: Okay.

21 (THIRD AMENDED INFORMATION READ BY THE COURT CLERK)

22 THE COURT: All right. Thank you. Ladies and
23 gentlemen, this case is based on that information that was
24 just read to you by my Clerk.

25 You should distinctly understand that the

1 Information is simply a charge, and is not in any sense
2 evidence of the allegation it contains. The defendant has
3 pled not guilty to the Information. The State, therefore,
4 has burden of proving each of the essential elements of the
5 charges beyond a reasonable doubt. And as the defendant sits
6 here, he is not guilty.

7 MS. RADOSTA: Your Honor, if we could just quickly
8 approach before you --

9 THE COURT: Sure.

10 MS. RADOSTA: -- continue with your --

11 THE COURT: Sure.

12 MS. RADOSTA: -- instructions.

13 (Off-record bench conference.)

14 THE COURT: All right. Ladies and gentlemen, the
15 purpose of this trial is to determine whether the State will
16 meet the burden that I just explained to you.

17 It is your primary responsibility as jurors to find
18 and determine the facts. Under our system of criminal
19 procedure, you are the sole judge of the facts. You are to
20 determine the facts from the testimony you hear and the other
21 evidence, including exhibits introduced in court, and this is
22 up to you to determine the inferences which you may feel can
23 be drawn properly from that evidence.

24 The trial begins with opening statements. The
25 District Attorneys will make an opening statement if they so

1 desire, which is an outline to help you understand what the
2 State expects to prove.

3 Next, the defendant's attorneys may, if they so
4 desire, make an opening statement, but they do not have to.

5 Opening Statements serve as an introduction to the
6 evidence, which the party making the statement intends to
7 prove, but they are not evidence.

8 Next, the State will commence with its case-in-
9 chief . This is the State's opportunity to present its
10 evidence. This consists of the calling of witnesses and the
11 production of physical items of evidence, such as documents,
12 photographs, and the like.

13 Counsel for the defendant may cross-examine the
14 State's witnesses. Following State's case-in-chief, the
15 defendant may present evidence, and the district attorneys
16 may cross-examine the defense witnesses.

17 However, as I've said, the defendant is not
18 obligated to do or present anything.

19 There are two types of evidence, direct and
20 circumstantial. Direct evidence is testimony by a witness
21 about what that witness personally saw or heard or did.

22 Circumstantial evidence is testimony or exhibits
23 which are a proof of a particular fact from which, if proven,
24 you may infer the existence of the second fact.

25 The best example I give of this is if the question

1 that you're trying to answer is whether it's raining outside,
2 you call a witness, you put the witness on the stand, and
3 they ask the question, where did you come from? He says
4 outside. What's the weather like? And the person says it's
5 raining outside. That's direct testimony, direct evidence.

6 Circumstantial evidence would be the same question
7 is, is it raining outside? They call a witness. When the
8 witness comes in the back door, he's got a rain suit on, he's
9 shaking out his umbrella, his rain jacket's wet, gets on the
10 stand, and they say, where did you come from? He says, I
11 just came from outside.

12 You could infer from those basic -- from those
13 circumstances circumstantial evidence that it's raining
14 outside. Okay?

15 You may consider both direct and circumstantial
16 evidence in deciding the case. The law permits you to give
17 equal weight to both, but it's for you to decide how much
18 weight to give to any evidence.

19 Anything you may have seen or heard outside the
20 courtroom is not evidence and must be disregarded.

21 Regarding the presentation of evidence. It is the
22 duty of these attorneys to object to evidence which they
23 believe should not be properly brought before the jury. At
24 times I may sustain objections or direct you to disregard
25 testimony or exhibits.

1 You may not consider any evidence in which an
2 objection has been sustained or which I have instructed you
3 to disregard.

4 In considering the weight and value of the
5 testimony of any witness, you may take into consideration the
6 appearance, attitude, and behavior of the witness, the
7 interest of the witness in the outcome of the case, if any,
8 the relation of the witness to the defendant or State, the
9 inclination of the witness to speak truthfully or not, and
10 the probability or improbability of the witnesses'
11 statements, and all the facts and circumstances in evidence.

12 Thus, you may give the testimony of any witness
13 just such weight and value as you believe the testimony of
14 that witness is entitled to receive.

15 If the defendant presents evidence, the State will
16 have the opportunity to present rebuttal evidence, and then
17 the defendant may have the opportunity to present surrebuttal
18 evidence.

19 After all the evidence has been presented, I will
20 instruct you on the law. After the instructions on the law
21 have been read to you, each side will have the opportunity to
22 present closing arguments.

23 What is said in closing arguments is not evidence,
24 just like opening statements is not evidence. The arguments
25 are designed to summarize and interpret the evidence while

1 discussing with you how to apply the law to that particular
2 -- to the particular facts in the case.

3 Since the State has the burden of proving the
4 defendant beyond a reasonable doubt guilty, State has the
5 right to open and close the arguments. This means the State
6 will make a closing argument, followed by closing argument
7 from the defense, and if the State chooses, they can make a
8 rebuttal closing argument.

9 After the arguments have been completed, you will
10 retire to deliberate on your verdict. I may during this
11 trial take note of the witnesses' testimony. You are not to
12 make or draw any inferences from my action.

13 I am required to prepare for legal arguments of
14 counsel during this trial and for that reason, I may take
15 notes. The jury will not have a transcript to consult at the
16 close of this case. However, you have been furnished
17 notepads for yourself to allow you to take notes of your own.

18 If any juror discovers during this trial or after
19 the jury has retired to deliberate that he or she has
20 personal knowledge of any fact in controversy in this case,
21 you shall disclose that situation to myself in the absence of
22 the other jurors.

23 This means that if you learn during the course of
24 this trial that you were acquainted with the facts of this
25 case or a witness that you had previous -- hadn't previously

1 told me about, the relationship with them, well, you must
2 then declare that fact to me. You do that by letting my
3 Marshal know, and then we bring you in and we discuss it
4 outside the presence of everyone else. Okay?

5 Additionally, if that situation does arise, you are
6 admonished that you may not relate it to any of your fellow
7 jurors any of the facts relating to this case that are within
8 your own personal knowledge.

9 Likewise, if you discover that any other juror has
10 personal knowledge of any fact in controversy in this case,
11 you shall also disclose that situation to myself in the
12 absence of the or jurors.

13 Once again, you communicate that through my
14 Marshal. And if the aforementioned situation does arise,
15 you're admonished that you may not relate to any of your
16 fellow jurors any of facts relating to this case that are
17 within your knowledge or what you learned from the other
18 juror. Okay?

19 You will also recall that during the course of this
20 trial, as I indicated previously, the attorneys for both
21 sides, the parties, the witnesses and the court personnel,
22 other than my Marshal, are not permitted to converse with
23 you. As I previously stated, these individuals are not being
24 antisocial; rather, they're bound by ethics and the law not
25 to talk to you. To do so could contaminate your verdict.

1 Moreover, you are admonished that you are not to
2 visit the scene of any of acts or occurrences made mention of
3 during this trial unless specifically directed to do so by
4 the Court.

5 Please don't investigate this case or anyone who
6 has anything to do with this case on your own. Do not
7 undertake any legal or factual research on your own.

8 Finally, you must not be influenced to any degree
9 by any personal feeling of sympathy for or prejudice against
10 the State or the defendant. Both sides are entitled to the
11 same fair and impartial consideration. Okay?

12 You will be given the opportunity to ask written
13 questions of any of the witnesses called to testify in this
14 matter. You are not encouraged to ask a large number of
15 questions because that's the primary responsibilities of
16 these attorneys.

17 Only a limited number of questions may be posed by
18 jurors, and you will not be allowed to become the third
19 attorney or to advocate a certain position with your
20 questions.

21 I have the discretion to preclude individual jurors
22 from asking an excessive number of questions. Questions may
23 be asked after both lawyers have finished questioning the
24 witnesses and only at that time.

25 For example, the State starts their case-in-chief,

1 calls a witness, conducts direct examination. Defense then
2 has an opportunity to conduct cross-examination. This
3 process could go back and forth a number of times. When they
4 both pass the witness and they have no further questions,
5 then and only then, I will turn to you to see whether or not
6 you have any questions.

7 If you do have a question, I'll ask that you write
8 it down on a full sheet of your notebook paper, put your name
9 and your juror number on that piece of paper. Understand
10 that once you do, then you just hold it up, my Marshal will
11 come pick it up, and then the parties will approach the
12 bench, we will discuss that to determine whether or not it's
13 admissible.

14 Now, understand you are bound by the same rules of
15 evidence that the parties are in admissibility of your
16 questions. Many times the questions I get from jurors are
17 calling for inadmissible questions like hearsay questions or
18 you're asking something of a witness that they may not be the
19 individual that has the answer for that. It may be somebody
20 else.

21 You guys -- when you say you guys, jurors are
22 always ahead of it. Understand the case is presented in a
23 certain manner. Oftentimes you're thinking way ahead in the
24 case. And so you might ask questions of a juror -- of a
25 witness that may be more appropriate for another witness.

1 Understand that after we discuss it at the bench
2 here, if I find that it is an appropriate question, then I
3 will ask it. All your questions are marked, they're made
4 part of the record so maybe later down the road somebody
5 could be looking at it to determine whether or not I made a
6 mistake by not allowing the question.

7 However, understand this as well, if it is a proper
8 question, it will be asked, and it will be asked exactly like
9 you write it. I will not interject any words, I will not
10 correct your pronunciation, I will not take words out. It
11 will be asked exactly like you ask it.

12 So understand that when you ask the question, it
13 has to be legible, it has to make sense, so when we're
14 determining that.

15 Also understand that oftentimes your questions
16 spark questions that the parties realize that maybe they want
17 to ask those as well.

18 Now, ask the question directly of the witness.
19 Don't say in your question, Judge, and then the question.
20 The question is for the witness as if you were asking it.
21 Okay? All right.

22 Now, once again, if your question is not asked,
23 don't be upset about that. Oftentimes you'll see that the
24 question is answered later or maybe even answered -- once
25 you're done asking your questions, then I turn it over back

1 to the parties, and they're able to ask questions as a result
2 of your questions. All right.

3 Your questions must be designed to elicit answers
4 regarding information that has already been presented to
5 basically verify what is being said. So that's where I say
6 if you -- oftentimes if you're asking questions that are in
7 nature probably better for a different witness that hasn't
8 even been brought up at this point. Okay?

9 Until the case is submitted to you, you must not
10 discuss it with anyone, even with your fellow jurors. After
11 it's submitted to you, you must discuss it only in the jury
12 room with your fellow jurors. It is important that you keep
13 an open mind and not decide any issue in this case until the
14 case has been submitted to you under the instructions from
15 me.

16 If you cannot hear a witness, please raise your
17 hand as an indication. If you need to use the restroom or if
18 you feel ill, also please raise your hand as an indication.

19 I try to take a break about every 90 minutes, I'll
20 give you an opportunity to use the restroom and take a break.
21 And like I said, before, I have no objection to you bringing
22 in drinks or snacks in this matter or anything that will help
23 you be comfortable.

24 I do want you to understand, though, it's not your
25 house, and we do have to clean up after you. And so far

1 jurors haven't abused it, so it's still going on. You've
2 still got that opportunity.

3 Also, if you're eating some type of snack that's
4 disruptive to the Court, I'll stop you from doing that. If I
5 hear you over there, you know, crunching on something, I'm
6 going to stop you. Okay?

7 Once again, let me remind you, until the case is
8 submitted to you, do not talk to each other about it or about
9 anyone who has anything to do with it until the end of the
10 case when you go to the jury room to decide your verdict. Do
11 not talk to anyone about the case or about anyone who has
12 anything to do with it until the trial has ended and you have
13 been discharged as jurors.

14 Anyone else includes members of your family and
15 your friends. You may tell them that you are a juror in a
16 criminal case, but don't tell them anything else about it
17 until you have been discharged by me.

18 Do not let anyone talk to you about the case or
19 anyone who has anything to do with it. If someone should try
20 to talk to you, please report that immediately to my Marshal.
21 Do not read any news stories or articles or listen to any
22 radio or television reports about this case or about the case
23 or about anyone who has anything to do with it.

24 I always say, if you think it has anything to do
25 with it, do not read into it or wait to see -- to verify that

1 it is before you decide to stop. If it appears to have
2 anything to do with it, go away from it. You can always look
3 for it later, look to see what you missed in the news later.
4 Okay?

5 I'm going to -- I've told you, if you want to
6 invite anybody down, they're more than -- this is an open
7 court, they're more than likely -- or more than welcome to be
8 here. But I will ask them as well to turn their phones off,
9 if they're in my audience.

10 And what I'm going to do when I have a witness on
11 the stand throughout this proceeding, I'm going to ask my
12 Marshal to stand guard of the door and not let people move in
13 and out of here. I think that's extremely rude, and if
14 people are coming in and out while my witness is on the
15 stand, my Marshal will stop you.

16 So if my Marshal's back there, and there's a
17 witness on the stand, and you're in my courtroom, don't even
18 attempt to leave. Okay?

19 All right. So do you want to take a quick break
20 before we get started? Do you guys want to take a break?
21 Yeah, everyone's shaking their head, yes.

22 Okay. Ladies and gentlemen, once again, I need to
23 read this admonition to you.

24 During this recess, you're admonished not to talk
25 or converse amongst yourself or with anyone else on any

1 subject connected with this trial, or read, watch, or listen
2 to any report or commentary on the trial or any person
3 connected with trial by any medium of information, including
4 without limitation, newspapers, television, Internet, or
5 radio, or form or express any opinion on any subject
6 connected with this trial until the case is finally submitted
7 to you.

8 It's now 11:00 o'clock. 15 minutes enough? All
9 right. 11:15. We'll be at ease while you exit. Okay?
10 Thank you.

11 (Jury exits at 11:01 A.M.)

12 THE COURT: Okay. We're outside the presence of
13 the jury. Before I finished charging the jury after the
14 Information was read, counsel for the defense had asked to
15 approach the bench and had indicated that there was -- I
16 believe, it was two, Count 97 and Count 106 had some mistakes
17 in the charging document.

18 In 97, what I saw was on line 13 it says, "to
19 engage in sexual intercourse, RS." I imagine that would read
20 -- and it's not my charging document, but I imagine it would
21 read "with RS" and --

22 MR. SWEETIN: That's correct, Judge.

23 THE COURT: Okay. And then on -- in Count 106 on
24 page 39, line 1, it says, "sexual acts with BS was forced to
25 commit or have committed upon the said RS." And at the bench

1 the State had indicated that the "BS" should read "RS"?

2 MR. SWEETIN: And that is correct, Judge. The way
3 the wording goes, remember, this relates to the counts in
4 which RS, I guess, Terrie Sena, performed fellatio on RS. So
5 the way it's read is, let's see, the defendant would kill him
6 and/or make his life a living hell if the said RS told anyone
7 of the sexual acts that said RS was forced to commit or had
8 committed upon the said RS.

9 THE COURT: Okay.

10 MR. SWEETIN: So that "BS" should be "RS".

11 THE COURT: Okay. So Ms. Radosta, do you want to
12 put on the record what your position was with regards to
13 the --

14 MS. RADOSTA: With regard to Count 97, Your Honor,
15 it's our position that's a just a typographical error and --

16 THE COURT: Okay.

17 MS. RADOSTA: -- so it didn't substantially change
18 the meaning of the charge.

19 THE COURT: Okay.

20 MS. RADOSTA: But Count 106 is alleging, as it was
21 currently read to the jury, impliedly that one of the minors,
22 BS, committed or -- committed -- if he told anyone of the
23 sexual acts that the said BS was forced commit or to have
24 committed upon RS.

25 It reads as though one of the minors was forced to

1 commit acts or committed acts on one of the other alleged
2 minors in this particular case, which is completely
3 inaccurate of any evidence that's been presented --

4 THE COURT: Okay.

5 MS. RADOSTA: -- or any discovery that's been
6 turned over to the defense --

7 THE COURT: Okay.

8 MS. RADOSTA: -- which is why it stuck out to me.
9 I think it gave the jury a misconception that there was
10 sexual activity, potentially, between two of the alleged
11 minors in this case, which, as I said, was completely
12 inaccurate in line with the discovery.

13 Based on that, Your Honor, we feel that a simple
14 amendment or a simple fix at the end to comport with the
15 meaning is not sufficient because it gives the impression of
16 something that the State is not anticipating presenting
17 evidence of.

18 It's our position that the State has two options
19 here. It can file a Fourth Amended Information changing the
20 language in Count 106 or at this point in time, they can just
21 simply move to strike 106 and not submit it to the jury.

22 THE COURT: Mr. Sweetin.

23 MR. SWEETIN: And State's position was, it's a
24 clear clerical error. As you read it, it's very clear, and
25 especially as the whole Information has been read, if the

1 jurors were to listen to specifically what was alleged, the
2 Counts work together.

3 And in this particular case, the group of Counts
4 relates to the acts that were committed by Terrie Sena upon
5 Ryan.

6 The similar charges were made on other groups
7 relating to other victims. So it's the same general format.

8 I think that it's -- you know, in my hearing of it,
9 if I had not been more connected to this Information, I
10 probably wouldn't have noticed, and I would just have
11 assumed. I think it's a typographical error. I think it's
12 appropriate to amend it and at the point that proof has been
13 submitted in this case. But we would leave it in the Court's
14 discretion. We certainly can file an Amended if the Court
15 wants.

16 THE COURT: Okay. With respect to --

17 MS. RADOSTA: If I could just make one further
18 point, Your Honor. This is the Third Amended Information
19 that's been filed. There was an Information, a First
20 Amended, a Second Information, and a Third Amended
21 Information, and the Third was filed about two weeks ago.

22 This is not the first time there have been -- the
23 State has discovered typographical errors in their charging
24 document. I believe only one was a Amended filed due to a
25 ruling by the Court that one of the Counts that you ruled in

1 favor of the defense on one of our motions, which changed the
2 language of one of the Counts. That was one of the Amended
3 Informations.

4 But all of the others have been typographical or
5 clerical errors that the State noticed. This will now be the
6 third or the fourth time that they've noticed something.
7 This is their charging document, Your Honor, and I feel that
8 it's their responsibility to present an accurate document to
9 the jury.

10 MR. SWEETIN: Well, the -- and to be clear, Judge,
11 this is the Third Amended. So there was one Amended that was
12 filed based upon a ruling of the Court, and there was a
13 prior. I would note this is a -- this is -- I've been
14 practicing law for a long time. This is a large Information.

15 And while we're at it, I would note that there --
16 and in the reading of this, I did notice two other areas, and
17 it has to do with dates. And one would be in regards to
18 Count, I believe -- I believe it's Count 1. Count 1 makes
19 reference to one of the Counts, which it makes reference to
20 in the -- this conspiracy Count, it's Count 52. The date
21 range for Count 52 actually begins May 22, 2004, and the date
22 range for the conspiracy count begins May 22, 2007. So we
23 would have to amend that as well to conform to the proof
24 that's going to be presented in this case.

25 And clearly, it's a clerical error because the

1 particular count makes reference to different counts and date
2 ranges.

3 THE COURT: Anything further?

4 MR. SWEETIN: I believe on Count --

5 MS. SUDANO: 100 and 104.

6 MR. SWEETIN: Yeah, in Count 100, we charged
7 possession of visual presentation of child porn essentially,
8 and in that Count, as in all the other possession of child
9 porn counts, September 18, 2014, that's the day when the
10 search warrant was performed. In this particular case it
11 says 2011. And it's the same situation on Count 104.

12 MS. RADOSTA: So now, Your Honor -- and I certainly
13 appreciate the State's stepping forward with those additional
14 amendments, but now I believe we have one, two, three, four,
15 five different counts that have to be Amended for various
16 date ranges and various initials and various sentences that
17 have left out words.

18 We're dealing with Count 1, Count 52, Count 97,
19 Count 100, and Count 106 are all inaccurate in this charging
20 document.

21 The -- previously our motion was just regarding
22 106, and I neglected to mention, of course, that any error in
23 the reading of an inaccurate Information to the jury presents
24 my -- or puts my client in a light -- or prejudices as my
25 client.

1 THE COURT: Okay.

2 MS. RADOSTA: Now we have five counts that have
3 been inaccurately read to -- and I'm sorry, not inaccurately
4 read; the court Clerk read them as they were written, but
5 inaccurately presented in this Information.

6 THE COURT: Okay.

7 MS. RADOSTA: And based on that, it's the State's
8 obligation to present a document that is accurate and
9 comports with the Information that was provided and testified
10 to at the preliminary hearing, Judge. And that was --

11 THE COURT: Let me ask you about --

12 MS. RADOSTA: -- the summer of 2015.

13 THE COURT: Let me ask you about this, Ms. Radosta,
14 just so you can kind of think about it.

15 MS. RADOSTA: Um-h'm.

16 THE COURT: The law also allows the State to amend
17 their Criminal Complaint or their Information all the way up
18 to the point where it's submitted to the jury to conform with
19 the testimony, conform with the evidence that's being
20 presented.

21 So in light of this, in light of the fact that we
22 are in a notice pleading state, are you telling me that your
23 client is not put on notice at least of those charges that
24 they talk about on this document here?

25 MS. RADOSTA: We're put on notice of the nature of

1 the offense, Judge.

2 THE COURT: Okay.

3 MS. RADOSTA: But the details -- the whole purpose
4 of reading the Information to the jury is to make them aware
5 of the charges. We read it in its entirety and with all of
6 the details so that the jury is made aware of the charges.

7 THE COURT: Okay.

8 MS. RADOSTA: And if inaccuracies are read to the
9 jury -- and it's not that these are not surprises to the
10 State. These are not oh, my goodness, the testimony did not
11 come out as they expected it to and therefore, they're asking
12 to amend --

13 THE COURT: Okay. So what are you --

14 MS. RADOSTA: -- to comport with the --

15 THE COURT: -- asking me to do? Are you asking me
16 to strike them?

17 MS. RADOSTA: I'm asking you to either -- the State
18 has options. They can either strike the counts that were
19 just read the jury with inaccurate Information --

20 THE COURT: Okay.

21 MS. RADOSTA: -- or they can file a Fourth Amended
22 Information.

23 THE COURT: Okay. What is wrong with them just
24 asking to amend this now?

25 MS. RADOSTA: Because at this state, Your Honor,

1 those charges have been read to the jury inaccurately. Once
2 again --

3 THE COURT: Okay. So what we can --

4 MS. RADOSTA: -- I'm not --

5 THE COURT: So what we can do is we can amend
6 them --

7 MS. RADOSTA: And that causes my client prejudice.

8 THE COURT: -- as they are, and then -- and I can
9 read those counts to the client -- to the --

10 MS. RADOSTA: I don't think you can read individual
11 counts --

12 THE COURT: Why not?

13 MS. RADOSTA: -- at this point, Judge. Because
14 then that puts --

15 THE COURT: Why not? I've read every case that's
16 been submitted to me, and all the information I can see under
17 175.141 --

18 MS. RADOSTA: But --

19 THE COURT: -- and that specifically talks about
20 how you charge the jury with regards to the charges. It
21 doesn't say that you have to read them in order, it doesn't
22 say that you can't read them in a certain direction.

23 It just says that the Information must be read to
24 the jury and --

25 MS. RADOSTA: But if you --

1 THE COURT: -- what he's pled not -- how he's pled.
2 MS. RADOSTA: But if you --
3 THE COURT: That's what it says. So --
4 MS. RADOSTA: Sorry, Judge.
5 THE COURT: But no, yeah, I'm --
6 MS. RADOSTA: I keep -- I keep stepping on you.
7 THE COURT: -- asking you. I mean, you're -- tell
8 me where it says that there's a prejudice that your client
9 would receive if at this point in time before we start with
10 the State's opening that they -- that we inform the jury
11 based on the purview and based on your position that you've
12 taken so far, is that there needs to be a correction to a
13 number of these counts.
14 MS. RADOSTA: Well, I'm sorry, I was going to
15 address the suggestion that you made, if I understood you,
16 Judge, that they could just correct them, and those five
17 counts could be re-read to the jury in their corrected form.
18 I don't think that that is a proper resolution
19 because --
20 THE COURT: Well, tell me why.
21 MS. RADOSTA: Because that is drawing attention to
22 five of the 120 counts. It's taking them out of context.
23 It's taking them out of -- it's actually having the --
24 THE COURT: So what you're suggesting is that they
25 file another -- a Fourth Amended Information --

1 MS. RADOSTA: Yes.

2 THE COURT: -- and then we re-read it again?

3 MS. RADOSTA: Or they can just strike those five

4 counts and --

5 THE COURT: Well, that's --

6 MS. RADOSTA: -- then those counts --

7 THE COURT: That makes no sense, it makes no sense

8 at all, Ms. Radosta.

9 MS. RADOSTA: It's their --

10 THE COURT: No, strike these counts or because

11 there's some clerical issues, you're not entitled to

12 prosecute under those clerical positions.

13 MS. RADOSTA: It's just a suggestion, Your Honor --

14 THE COURT: Okay. All right.

15 MS. RADOSTA: -- that if they don't want to file a

16 Fourth Amended -- I'm not saying that it's legally -- that

17 there's any legal precedent for that. I'm just saying it's

18 an option for them.

19 If they don't want to file a Fourth Amended

20 Information, another option would be to just strike them.

21 It's merely a suggestion, Your Honor.

22 THE COURT: Wouldn't the other option be to amend

23 it and notify them now of a clerical mistake that was read to

24 them initially?

25 MS. RADOSTA: But if you single out any individual

1 counts and re-read them --

2 THE COURT: How is that going to prejudice your

3 client --

4 MS. RADOSTA: Because --

5 THE COURT: -- when he's got 120 counts here, and

6 there's five of these being singled out because there's a

7 clerical mistake?

8 Oh, by the way, we didn't put the word "with" in

9 here, by the way the term "RS" is actually -- "BS" is "RS".

10 MS. RADOSTA: Because it --

11 THE COURT: It makes no sense to me.

12 MS. RADOSTA: It's very simple that you're drawing

13 attention to some counts over other counts, Your Honor.

14 THE COURT: All right. Okay.

15 MS. RADOSTA: And those then being read to the

16 jury --

17 THE COURT: I'm willing --

18 MS. RADOSTA: -- more than one time.

19 THE COURT: I'm willing to let -- if you'd like,

20 I'm willing to amend it now, read them to them to correct it

21 and we can give them a curative instruction at the close of

22 the case that they're not to consider -- or I'll do it now --

23 you're not to consider any of these above any of the other --

24 other instruction -- I mean, any of the other charges.

25 MR. SWEETIN: That's fine, Judge. The State would

1 move to amend to correct.

2 THE COURT: Okay. So we'll do that. All right.
3 So why don't we take a quick break, let Mr. Sena use the
4 restroom, you all take a restroom break. We'll be back as
5 soon as we get -- yeah.

6 Don't go off Christine because --

7 THE COURT RECORDER: Well, it will record
8 everything though, Judge.

9 THE MARSHAL: Court will be in short recess.

10 (Court recessed at 11:14 a.m. until 11:33 a.m.)

11 (Outside the presence of the jury.)

12 (Off-record bench conference.)

13 THE COURT: All right. Ladies and gentlemen, we're
14 back on the record in case of C-311453, State of Nevada
15 versus Christopher Sena.

16 As I indicated, I'm going to go ahead and inform
17 the jury of the corrections basically at this point of the --
18 on the Information and -- on the Third Amended Information.

19 You've made your record, Ms. Radosta, I appreciate
20 that. That's the ruling I'm staying with.

21 Also, I want it clear from the media, if it's not
22 already clear, is that I do want you showing any photographs
23 of the jury or of any of the victims. Even though the
24 victims at this point in time, I think, all of them are
25 adults now, I still don't want you showing them -- I mean,

1 you can show below their face, but I don't want their faces
2 on camera or anything. Okay? You guys abide by that?

3 UNIDENTIFIED SPEAKER: Yes, sir.

4 UNIDENTIFIED SPEAKER: Yes, sir.

5 THE COURT: I think my order has -- was written
6 that way as well.

7 UNIDENTIFIED SPEAKER: Yeah, it was on the request.
8 So they -- that's what they informed us of.

9 THE COURT: Okay. All right.

10 UNIDENTIFIED SPEAKER: So --

11 THE COURT: So that will remain.

12 Also, I'll tell you that I know you guys want to
13 get your stories out, and so a lot of you leave in the middle
14 of statements or whatever. I'll allow you to leave in
15 between, like, when the State does their opening. When
16 they're done with their opening, I'll allow you to leave.
17 I'm not going to let people coming and going while somebody
18 is addressing the jury. Okay?

19 UNIDENTIFIED SPEAKER: Yes, sir.

20 THE COURT: All right. You got a question?

21 UNIDENTIFIED SPEAKER: Can I ask a question? Yes.
22 I'm with the RJ.

23 THE COURT: Okay.

24 UNIDENTIFIED SPEAKER: I'm also waiting a verdict
25 in another case --

1 THE COURT: Okay.

2 UNIDENTIFIED SPEAKER: -- that I may have to --

3 THE COURT: Well, you might need to go now, then.

4 UNIDENTIFIED SPEAKER: Well --

5 THE COURT: I'm telling you, I'm not going to let
6 anyone come and go while we're in the middle of somebody
7 addressing this jury. And with all deference to the press,
8 that's been a big problem with me with the press when we've
9 had cases like this.

10 Downstairs I had a door I could lock, and I would
11 do that. I had a couple cases that were live streaming and
12 they were moving in and out. Not you, but people moving in
13 and out.

14 If -- I'll give you -- if it comes in, just let me
15 Marshal know. He's going to be there, and we can deal with
16 it that way. But other than that, unless you have an
17 emergency, I would consider that an emergency, I would.

18 But unless you have an emergency, I'm not going to
19 let you come and go. Okay? Can everybody abide by that.

20 UNIDENTIFIED SPEAKER: Yes, sir.

21 THE COURT: All right.

22 UNIDENTIFIED SPEAKER: Yes, sir.

23 THE COURT: Okay. So let's get the jury in, Ed,
24 and we'll get started. Okay.

25 (Pause in the proceedings)

1 THE MARSHAL: All rise for the jury.

2 (Jury enters at 11:37 A.M.)

3 THE COURT: All right. Everybody go ahead and have
4 a seat.

5 We're back on the record in the presence of the
6 jury in Case No. C311453. I'd like the record to reflect the
7 presence of the defendant, his counsel, as well as the State,
8 and their counsel, and all members of the jury.

9 Will the parties stipulate to the presence of the
10 jury?

11 MR. SWEETIN: Yes, Your Honor.

12 MS. RADOSTA: Yes, Your Honor.

13 THE COURT: Ladies and gentlemen, before the State
14 does their openings, it's been brought to my attention that
15 there's a couple errors that were made in the charging
16 document.

17 Once again, I want you to understand that the
18 charging document is merely that. It contains no -- I mean,
19 in and of itself, it is not evidence of the crime -- crimes
20 that are being alleged.

21 And for that reason, I need to just make some quick
22 notes. At the close of the case, you will be given the
23 document that you will be working with and looking at to
24 determine whether or not the evidence is proven based on that
25 charging -- based on that document. This is just the

1 Information here. Okay?

2 On Count 1, the allegation was, did on or between
3 May 22, 2007 was the original, and it's between May 22, 2004
4 and June 30, 2014 by willfully and lawfully and feloniously
5 conspiring with Deborah Sena and/or Terrie Sena and/or others
6 unknown to commit a sexual assault by performing those acts
7 described in Counts 46 through 52, 54 through 59, 61 through
8 77, 79 through 85, 95 through 99, 101 through 103, and 105.

9 Then on -- in Count 97, this is a count of incest,
10 on line 13, the allegation reads, To engage in sexual
11 intercourse RS, the word "with" needs to be inserted between
12 intercourse and RS. So it would read, did on or between June
13 14, 2010 and June 13, 2014, willfully, unlawfully, and
14 feloniously assist and/or cause Terrie Sena to commit
15 fornication or adultery with or on RS, the son of Terrie
16 Sena, Terrie Sena and RS being within the degree of
17 consanguinity within which marriages are declared by law to
18 be incestuous and void. The defendant committing the crime
19 of assisting and/or causing Terrie Sena to engage in sexual
20 intercourse with RS. Defendant being liable under one or
21 more of the following principles of criminal liability. One,
22 by defendant acting with Terrie Sena and/or others unknown
23 pursuant to a conspiracy with Terrie Sena and/or others
24 unknown to perform such acts and/or, two, by defendant aiding
25 and abetting the performance of such acts by counseling,

1 encouraging, inducing, or otherwise preparing Terrie Sena to
2 commit such acts.

3 Then on -- in Count 100, possession of visual
4 presentation depicting sexual conduct of a child. On line 18
5 it reads, did on or about September 18, 2011. It should read
6 2014. So it will read in its entirety, Did on or about
7 September 18, 2014 willful, unlawfully, feloniously, and
8 knowingly have in his possession a film, photograph, or other
9 visual presentation depicting RS, a child under the age of 16
10 years of age, as the subject of sexual portrayal or engaging
11 in, simulating, or assisting others to engage in or simulate
12 sexual conduct, to wit: A video showing Terrie Sena engaging
13 in sexual intercourse with and performing fellatio on RS.

14 Then in Count 104, it's also entitled, Possession
15 of visual presentation depicting sexual conduct of a child,
16 and it reads on line 7, Did on or about September 18, 2011.
17 It should read 2014. Did on or about September 18, 2014,
18 willful, unlawfully, feloniously, and knowingly have in his
19 possession a film, photograph, or other visual presentation
20 depicted RS, a child under the age of 16 years age, as a
21 subject of sexual portrayal or engaging in, simulating, or
22 assisting others to engage in or simulate sexual conduct, to
23 wit: A video showing Terrie Sena performing fellatio to RS.

24 Then in Count 106, on the next page on line 1, it
25 reads, sexual acts, the said BS. It should read the said RS.

1 So it reads in its entirety, Did on or between June 14, 2010
2 and June 13, 2014, then and there willfully, unlawfully, and
3 feloniously by intimidation or threats prevent or dissuade or
4 hinder or delay RS from reporting a crime to anyone by said
5 defendant telling said RS that the said defendant would kill
6 him and/or make his life a living hell if the said RS told
7 anyone of the sexual acts that said RS was forced to commit
8 or have committed upon the said RS.

9 Okay? Once again, I want to remind you that this
10 is a charging document, and in and of itself has nothing --
11 has no -- does not show or does not have any evidence. It's
12 just a charging document. Okay? Does everyone understand
13 that?

14 Do not consider the counts that I just read as
15 something that you need to consider greater or with less
16 degree just because I read them to you. Okay?

17 All right. With that being said, does the State
18 wish to make an opening statement?

19 MR. SWEETIN: Yes, Your Honor.

20 THE COURT: All right.

21 STATE'S OPENING STATEMENT

22 MR. SWEETIN: May it please the Court, Counsel,
23 co-counsel, ladies and gentlemen of the jury.

24 "If you love me, you would let me do it." Ladies
25 and gentlemen, those are words spoken by none other than the

1 defendant, Christopher Sena, spoken to his then 11-year-old
2 daughter, Anita Sena, as she returned home from a sixth grade
3 school day.

4 Spoken as he removed Anita's clothing, as he
5 touched her vaginal area and her breasts area and fondled
6 them with his hands, as he exposed his penis to her, and
7 placed it on her vaginal area.

8 "If you love me, you would let me do it," as the
9 defendant raised Anita's legs, spit on his hand, put his hand
10 on his penis, and inserted his penis in his 11-year-old
11 daughter's anus.

12 Now, you're going to hear from Anita, this hurts.
13 She told the defendant it hurt. How did the defendant
14 respond? "It is going to hurt, but this is life."

15 As Anita struggled with the pain, just to breathe,
16 the defendant told her why he did this. He was showing her
17 how people love each other.

18 Ladies and gentlemen, this is one of the instances
19 of sexual abuse suffered by Anita Sena, the State submits the
20 evidence will show. Unfortunately, the evidence is going to
21 show about many other incidences of sexual abuse committed
22 upon Anita and you'll hear that evidence over the course of
23 this trial.

24 Not only Anita, but you'll hear that the
25 defendant's sexual abuse actually affected a total of seven

1 children, and you'll hear about each much those children in
2 the course of this trial.

3 Now, the first question we have to ask is how did
4 the defendant gain access to all these children. And who
5 understand this, we have to understand that all of the
6 victims in this case were connected to the defendant, either
7 in his direct family or through his extended family.

8 And we have here a diagram that sort of details
9 that family. At the very top we see Christopher Sena. Then
10 we see Terrie Sena. Terrie Sena was Christopher Sena's first
11 wife. With Terrie Sena the defendant had two children, Anita
12 Sena and Terry Tails Sena. We'll refer to him throughout
13 this case as Tails Sena.

14 Terrie also had another child with another man by
15 the name of Ryan Sena. After Terrie, the defendant divorced
16 Terrie and married Deborah Sena, and he had one child with
17 Deborah Sena, Brandon Sena.

18 You're going to also hear that Terrie had sisters,
19 Kimberly Grisham and Melissa Clark. You're going to hear
20 that they had children who were Terrie's nieces; that would
21 be Tamara Grisham and Erin Clark.

22 Now, the victims that you're going to hear about,
23 the alleged victims in the court of this trial are going to
24 be Anita Sena, Tails Sena, Ryan Sena, Brandon Sena, Tamara
25 Grisham, Erin Clark, and Terrie's much younger sister, about

1 ten years younger than her, Melissa Clark.

2 Now, between these family members, some of the
3 sexual abuse suffered was similar and some was different.
4 The types of sexual abuse you'll hear about include acts
5 committed by the defendant, and I'm going to call these acts
6 one-on-one acts. It's just the defendant and the alleged
7 victim.

8 And you're going to see those acts or hear about
9 those acts in regards to the defendant placing his penis in
10 or on the anus of Anita and Ryan, the defendant placing his
11 penis in and on the vaginal opening of Anita, the defendant
12 placing his penis on or in the mouth of Anita, the defendant
13 placing his finger or hand on or in the vaginal opening of
14 Anita and Erin, and the defendant fondling the breasts of
15 Anita and Erin.

16 Now, besides this one-on-one sexual conduct, you're
17 also going to hear about other sexual abuse, which included
18 the defendant directing his wife, Deborah, or his ex-wife,
19 Terrie, to perform sexual acts on given family members while
20 the defendant watched or sometimes participated.

21 Now, this abuse included the sexual acts similar to
22 the ones we just talked about on the one-on-one acts.

23 Some sexual acts and child nudity were recorded in
24 videos, and in the course of this trial, you're going to see
25 some of those videos.

1 So now, to summarize, Terrie and defendant
2 committed sexual acts together on Anita, Brandon, Ryan, Erin,
3 Tamara, and Melissa. And Deborah and the defendant committed
4 sexual acts together on Anita, Tails, and Brandon.

5 Now, that's the summarization. We'll go through
6 each of the acts in the course of this trial one by one and
7 lay them out thoroughly.

8 You'll hear that the defendant specifically told
9 many of the children not to say anything about what was going
10 on or that if they did say something, something's going to
11 happen to you. You'll hear particularly that was the case
12 with Anita, Brandon, and Ryan.

13 Now, to understand how all of this kind of
14 transitions and happens, we have to go back to the beginning,
15 and it really starts with two individuals, and that is the
16 defendant and Terrie Sena.

17 You're going to hear that Terrie met the defendant
18 in about 1987, when she was 17, she was a senior in high
19 school at the time, and he was about four years older than
20 her at the time.

21 Terrie was living at home with their family at the
22 time. And you're going to hear that as the defendant begins
23 to date and get together with Terrie, that he meets her
24 family, including her younger sister, Melissa, that we
25 previously talked about, who was about seven or eight years

1 old at the time that defendant and Terrie met. She was about
2 ten years younger. Melissa's ten years younger than Terrie.

3 Now, the defendant and Terrie began to live
4 together, and Terrie gave birth to Anita, Anita Sena, who
5 we've talked about in May of 1990.

6 The defendant and Terrie were ultimately married a
7 short time later in September of 1990, and during that
8 marriage, besides Anita, a second child was born, and that's
9 Tails that we've talked about, who was born in 1994.

10 The marriage ended in about August of 1997. Now,
11 during that marriage, you're going to hear that the defendant
12 was violent with Terrie from time to time. The defendant
13 wanted certain things to happen in the marriage, which Terrie
14 ultimately agreed to do.

15 You'll hear that one of the things that the
16 defendant wanted was for Terrie to set up times or
17 opportunities when he could have contact with her much
18 younger sister, Melissa.

19 You're going to hear about a time when the
20 defendant was able to be alone with Melissa, and this would
21 have been back when Melissa was about 10 or 11 years old,
22 back in about 1991 or 1992.

23 And this is Melissa when she was about 11 years
24 old. Defendant told Melissa that he loved her, and that they
25 needed to have a special relationship. This is when he's

1 able to be alone with her, just him and her.

2 The defendant in the course of this conversation of
3 how special their relationship was exposes his penis to
4 Melissa, and he wanted her to touch it. Melissa's 11 years
5 old. She's going to tell you about her just kind of not
6 really understanding what's going on here. But he's telling
7 her -- this is her sister's husband, she's telling him to
8 touch her -- his penis, so what does she do? Well, she takes
9 her hand, and she just touches his penis real quick and pulls
10 it back.

11 What happens next? The defendant then tells
12 Melissa that she needed to show him something because he
13 showed her something, and then at that point, Melissa exposes
14 her breasts to the defendant after which he touches and
15 fondles her breasts, and he tells Melissa not to tell anybody
16 what happened. And that's how that incident ends.

17 Now, this conduct with Melissa, you're going to
18 hear, which starts -- this is early on in the relationship
19 between the defendant and Terrie, it progresses after this
20 first incident that we've just discussed, progresses to him
21 taking nude pictures of Melissa. Progresses to involving
22 Terrie at some point in the conduct taking nude pictures of
23 both Melissa and Terrie together.

24 Some of those photos were actually taken and will
25 show the defendant, Terrie, and Melissa all nude together in

1 sexual situations as the conduct progresses.

2 You'll see some of those photos in the course of
3 this trial. You're going to hear that the defendant began to
4 sexually penetrate Melissa with anal intercourse when she was
5 about 15 or 16.

6 Now, after Terrie and the defendant's marriage
7 ended in about 1997, the defendant took custody of the two
8 children, and we talked about them, Anita and Tails, who were
9 born in the course of the marriage.

10 And at the time, in about 1997, Anita's seven and
11 Tails is three. You're going to hear that Terrie, after
12 separating from the defendant, later gets pregnant by another
13 man, and has a third child, Ryan.

14 Ryan's born about June of 1998. Now, at the time
15 that the defendant and Terrie's marriage is ending in about
16 1997, you're going to hear about a second woman who comes
17 into this, and that's going to be Deborah, as the defendant
18 begins to get involved with her romantically.

19 Deborah got pregnant with Brandon, which is the
20 defendant's son, and gave birth in about August of 1998.

21 Now, remember, Brandon -- or Ryan was just born
22 just a few months before that. There's just a few months
23 that separate Brandon and Ryan.

24 You'll hear that about this time, the defendant
25 sort of begins to rekindle his relationship with Terrie,

1 while this relationship is still going with Deborah.

2 He told Terrie that he wasn't happy with Deborah,
3 that he still loved Terrie, that he wanted him and Terrie to
4 be a family. And at some point, Deborah left Nevada for a
5 period of time to go back east to spend time with her father,
6 who had an illness, and was actually dying.

7 And about this time the defendant began to have sex
8 with Terrie, and he told her that this is his plan; give him
9 a couple years when Deborah's father passed away, she would
10 get an inheritance, and then the defendant said that he could
11 get that inheritance and he and Terrie would be together.

12 So Deborah returns to Nevada, and the defendant and
13 Deborah ultimately are married in about February of 1998. At
14 this point, the defendant moves into his trailer home located
15 at 6012 Yellowstone here in Las Vegas. And you'll hear a lot
16 about this trailer home because this is where many of the
17 incidents that we're going to be talking about happened.

18 He moves into that residence initially with
19 Deborah, Anita, Tails, and Brandon. And you'll see pictures
20 of the inside and outside of this residence. It's a trailer
21 home. There's a yard. There's actually a back building as
22 well that they'll talk about.

23 Now, after Brandon's born in August of 1998,
24 Deborah was working and the defendant and Deborah couldn't
25 afford daycare for the children. So the idea came up and was

1 decided that Terrie would move into the residence with her
2 new son, Ryan, to watch the kids during the day. And that's
3 what happens. Terrie moves into the residence with Ryan.

4 Ryan and Brandon are infants at this time,
5 remember. So now, at this point, we have living in that
6 residence Christopher Sena, Deborah Sena, Terrie Sena, and
7 four of the seven victims, Anita Sena, Terry Tails Sena, Ryan
8 Sena, and Brandon Sena.

9 Now, the residence itself, you'll see pictures of
10 it, and this is a diagram of it. When they originally move
11 into this residence, this bedroom, front bedroom's not there,
12 but they alter it to make this front bedroom.

13 And once that front bedroom is there, they put the
14 boys there, which would be Tails, Ryan, and Brandon in this
15 room.

16 In the bedroom back here toward the back of the
17 house would be Anita's bedroom. In the master bedroom is
18 going to be the defendant and Deborah's bedroom, his current
19 wife.

20 When Terrie moved in with Ryan, she initially slept
21 on a couch out in the living room. Now, I talked about this
22 out building in back. In order to get to this building in
23 the back, you have to go out of the residence, walk outside,
24 and walk into this building.

25 Now, what the building is essentially, there's a

1 bathroom back there, sort of a little kitchenette. There's
2 an area as it was fashioned for the -- all relevant times in
3 this case of sort of an office area where there's a desk area
4 with a computer and things of that sort.

5 There was also a little area here where there was a
6 couch or little bed that was set up.

7 Now, when Terrie originally moved into the house,
8 the defendant's father and later his brother was staying
9 there for a short time. But ultimately, Terrie moved back to
10 that particular area, and she stayed in back.

11 Now, you're going to hear that both the defendant
12 and -- both from the -- from Deborah and Terrie in the course
13 of this trial about the events leading up to moving into that
14 residence and everything that happens after they move into
15 that residence.

16 They have both pled guilty to sexual assault due to
17 their conduct in this case, the conduct they're going to
18 testify to you during the course of this trial, and they're
19 currently serving a sentence of ten years to life in prison.

20 As a part of their negotiation, they agreed to
21 testify truthfully in this case.

22 Now, everybody that I've discussed here as moving
23 into that residence at this point, essentially, lived at this
24 residence from about 1998 until the police became involved in
25 2014.

1 You're going to hear that Terrie and Ryan left the
2 residence from time to time during this period, but they
3 always returned.

4 Now, a lot happened in this residence over that
5 approximately 16 years from 1998 to 2014. Over the years,
6 both Deborah and Terrie were recognized sort of as the
7 mothers to all of these children. There was some violence by
8 the defendant in the household you'll hear about. All the
9 kids knew that when the defendant said to do something, they
10 had better do what he said.

11 There was also this progressive course of sexual
12 conduct in the household that you're going to hear about.
13 Just a short time after Terrie moved into the residence, she
14 began to have sex with the defendant. You're going to hear
15 that Deborah found out about this and accepted it, but that's
16 really just the beginning.

17 You're going to hear that the defendant began to
18 have Deborah watch him have sex with Terrie, to have Terrie
19 watch him have sex with Deborah. Then defendant began to
20 have sex with Deborah and Terrie at the same time.

21 Beyond this conduct, on one occasion that you're
22 going to hear about the defendant directed Deborah how to
23 have sex with the dog. And in fact, the defendant brought a
24 dog in and assisted her in performing sex acts with the dog
25 while the defendant filmed this event. And that's going to

1 become important later in the case, as I discuss it.

2 Now, Deborah and Terrie will both tell you that
3 when they did have sex with the defendant, that he would many
4 times tell them to make sexual comments about their children,
5 which excited the defendant. Now, this is from a very young
6 age with the children.

7 He would have Deborah and Terrie talk about how
8 they would love to have sex with the boys, Tails, Ryan, or
9 Brandon. Or how the defendant would perform sexually with
10 Anita or what a mother/daughter sex situation would be with
11 Anita.

12 They also -- or he also wanted them to discuss
13 sexual comments about Erin and Tamara. Now, I'm going to
14 jump back to Erin and Tamara for a moment. Remember, that
15 Tamara and Erin didn't live in the household, but they were
16 part of the extended family. They were sort of the nieces of
17 Terrie.

18 Now, the conduct with Tamara and Erin kind of
19 happens a little later, but want to get into that first and
20 then we'll go back.

21 Erin and Tamara both lived with Melissa and Melissa
22 and Terrie's parents. So they weren't in the residence. And
23 you're going to hear that Tamara visited the residence
24 between the ages of about eight and 15, so about between 2004
25 and 2013, and that Erin visited the residence between the

1 ages of about nine and 13. That's about 2010 and 2014.

2 Now, remember, we started discussing this. We
3 talked about defendant and Terrie having sexual contact with
4 Melissa; remember? The defendant continued to have sexual
5 contact with Melissa in that Yellowstone residence even after
6 they moved into that Yellowstone residence for about a year.
7 But you're going to hear that the sexual conduct stopped when
8 Melissa turned 18 in about 1999, when Melissa basically
9 stopped coming over to that residence and visiting on a
10 regular basis.

11 And Melissa's going to tell you that she sort of
12 realized what -- what was happening was wrong, and she didn't
13 want to be part of it.

14 Now, Melissa's going to tell you that she did not
15 stop Tamara and Erin from going over to defendant's residence
16 because she thought the conduct she had suffered was personal
17 and isolated to her.

18 Now, Tamara and Erin will both testify in this
19 proceeding as to what happened to them when they visited the
20 defendant's residence. And as they testify to you here, as
21 many of the witnesses, they're going to be much older than
22 they were when these incidents were happening. As they
23 testify here, Tamara's going to be 22 and Erin's going to be
24 18.

25 This is a picture of Tamara when she was about 11

1 years old in the midst of this time period. And you're going
2 to hear from Tamara. She'll tell you that she spent a number
3 of weekends over at the defendant's house and she'll describe
4 what she observed while she was there.

5 She's going to tell you that she was not sexually
6 touched while she was there. However, she was on occasion
7 called back to the back office, this back building that we
8 talked about, by the defendant. And while in there, the
9 defendant showed her pornographic videos. One of those
10 videos, in fact, showed her Aunt Terrie performing oral sex
11 upon the defendant.

12 Tamara remembers taking showers while she was
13 visiting at that residence. A video was made of her, which
14 you're going to see in the course of this trial, while she
15 was taking a shower in the back office of that residence.
16 Certainly, she did not know that there was a video made of
17 her. And you'll see that video.

18 You're going to hear from Terrie. Terrie will
19 testify that she assisted the defendant to record this video.
20 And this is how she did it. We talked about that little room
21 back there. There was a bathroom in that room. Now, the
22 door to that bathroom is not the traditional kind of open
23 door, it's called an accordion door. It sort of slides this
24 way and slides back. And when it slides together the top is
25 all tight. When it goes apart, there's little spaces at the

1 top so that you can look through and kind of see inside.

2 So what happened was that the defendant took a
3 camera, he climbed up on a chair, and he put this camera over
4 the top of that door so that he could film Tamara as she was
5 taking a shower through those holes at the top of that door.

6 Now, Terrie's going to tell you that while he was
7 doing this, she was performing oral sex on him to
8 ejaculation. You're going to hear or see actually when you
9 see that video that as a part of that video, the defendant
10 pans down and shows Terrie giving the defendant oral sex.

11 Now, you're also going to hear from Erin. Erin
12 will tell you that when she visited the defendant's
13 residence, that defendant would also sometimes call her back
14 to the same back building that we're talking about.

15 Erin's going to tell you that she was sexually
16 touched. In fact, he would have her lift up her shirt, pull
17 her pants down to her ankles, and at that point, he would
18 fondle her breasts and vaginal areas.

19 This happened on a number of occasions, as she
20 testifies to you, she'll tell you about. Erin also remembers
21 taking showers while she was visiting this residence. A
22 video was made of her while she was taking one of those
23 showers in the back office. You'll see that video. Again,
24 she did not know that that video was being made.

25 Terrie will testify on -- as to this incident as

1 well. She assisted the defendant in making this video
2 recording. And it was basically done the same way, same
3 location, that bathroom back in the back building, same
4 accordion door, he climbs up on the chair, he's filming
5 through the top of that accordion door, the holes in the
6 accordion door. And you're going to hear that on this
7 occasion, again, Terrie was performing oral sex on the
8 defendant.

9 A little different on this occasion. The occasion
10 stops and afterwards Terrie remembers that Erin leaves, and
11 then the defendant has sex with Terrie. But while he's
12 having sex with Terrie, he's playing back and watching the
13 video that he has just made of Erin.

14 Now, the defendant was involved in sexual conduct
15 with all the children living in the Yellowstone residence.
16 Remember, I says we're going to kind of go forward and then
17 go back?

18 The sexual conduct involving Tamara and Erin kind
19 of happens in the midst of all the other sexual conduct
20 that's going on inside the house and we're going to talk
21 about that a little bit right now.

22 So now, remember, in the house, living in the house
23 we have Anita Sena, Tails Sena, Ryan Sena, and Brandon Sena.

24 All the conduct that happened, happened at that
25 Yellowstone residence involving these victims. And you will

1 hear each of the children describe what happened to them in
2 the course of this trial.

3 Deborah and Terrie will also testify to the sexual
4 acts with their children in which they participated with the
5 defendant.

6 You'll hear that up until 2014, none of the
7 children knew their siblings were also being sexually abused.
8 They thought it was just them.

9 As the children testify to you in this proceeding,
10 again, like Tamara and Erin, they're going to be much older.
11 Anita is now 28, Tails is 24, and Ryan and Brandon are 20
12 years old.

13 Now, now this is a photo in about the early 2000s.
14 In this case, during this photo, Anita is 11 years old, Tails
15 is about seven, and Ryan and Brandon are about three years of
16 age. This is about the time that the sexual conduct starts.

17 When Ryan and Brandon were both between three and
18 five years of age, you'll hear both Deborah and Terrie
19 testify that the defendant directed each of them to have
20 sexual contact with the boys.

21 You'll hear Deborah testify that when Brandon was
22 three years of age, the defendant wanted him to perform sex
23 acts on Brandon. You're going to hear about the discussion
24 that was had in the course of this. Defendant tells her, you
25 don't love me enough, Terrie loves me more.

1 He told her that he wanted her to prove his love
2 for him. The defendant said, "if you love me, you'll have
3 sex with Brandon." Deborah took Brandon's clothes off, she
4 took her own clothes off, she then performed oral sex on
5 Brandon. The defendant stood in the doorway holding a camera
6 -- and that's important a little bit later -- at that time.

7 The defendant put Brandon -- beyond this, the
8 defendant put Brandon on top of Deborah as she laid on her
9 back. He also manipulated Brandon's penis into Deborah's
10 vagina, you're going to hear. Defendant then sent Brandon
11 out of the room, and he had sex with Deborah.

12 Now, Terrie will testify that she recalls the
13 defendant bringing her and Deborah into a room with Brandon
14 and Ryan when the boys were about five years of age, and she
15 remembers that the defendant had both woman perform oral sex
16 on the boys at that time while he filmed the event. Now,
17 Deborah does not recall this event, you're going to hear.

18 Now, this is Anita when she was 11 years old. Now,
19 remember, at the beginning of this, we talked about an
20 incident involving Anita, and as she's going to testify to
21 you, she suffered abuse over a very long period of time. And
22 she's not sure she can remember the first time, but she
23 remembers the first time being something as we've described
24 and that she was about 11 years of age.

25 Similar incidents happened with great regularity,

1 and she's going to tell you that it was great regularity.
2 When Anita was about 14, we're going to hear that it changed
3 a little bit. Remember in that first incident, the defendant
4 was having anal intercourse. When she was about 14, that
5 changed a bit and included vaginal intercourse.

6 On one occasion, you're going to hear that the
7 defendant had Deborah join in as the defendant was having sex
8 with Anita. And on another occasion the defendant had Terrie
9 join in as the defendant was having sex with Anita.

10 Anita was told never to tell anybody, and ladies
11 and gentlemen, she didn't tell anyone about this abuse. Her
12 abuse continued from the time she was about 11 in 2001 up
13 until the time the police investigation began in 2014, when
14 she was 24.

15 Of all the victims that you'll hear from in this
16 case, she suffered abuse for the longest.

17 Over that time, you'll hear that she didn't feel as
18 if she could leave. And Anita is going to tell you that she
19 felt terrorized of what the defendant might do to her. She
20 believed that he had connections or methods to find her and
21 control her wherever she went.

22 And beyond that, she also wondered what would
23 happen to her siblings if she did leave. Anita thought that
24 her suffering was in some way protecting her siblings.
25 Remember, we discussed that there was violence going on in

1 the house over this period of time. And she will tell you
2 that she saw what the defendant would do, and she saw that he
3 would not be as violent with her siblings if he had sex with
4 her. There was a connection that she saw between that.

5 After the abuse had gone on for years and the
6 defendant had sex with Anita so many times, you're going to
7 hear that she would sometimes just give herself to the
8 defendant to make life easier in the house.

9 The evidence will show the defendant taught her
10 that this was what was expected of her from the time that she
11 was 11 years old. This was Anita's life.

12 Now, you're going to hear about Tails. This is a
13 photo of Tails when he was about 11 years old in the course
14 of this time in the house. You're going to hear about two
15 incidents involving Tails. A portion of one incident and the
16 entirety of the other incident are recorded in video form,
17 and you'll see that here in the courtroom.

18 The first incident occurred when Tails was about 14
19 or 15 years old, and it happened just after Tails was outside
20 the residence, he was assisting the defendant to paint the
21 top of their trailer residence, along with Deborah and other
22 family members who were out there.

23 Tails got some paint on himself, and defendant --
24 as a result of that, the defendant caused Tails and Deborah
25 to come into the house and get into the shower. And we

1 talked about the shower in the back of that back building
2 before.

3 There was another bathroom inside the main
4 residence, and that's the shower that he had them get into on
5 that occasion. They were both nude as they got into that
6 shower. And the defendant can be seen in the video of this
7 sort of setting up the video camera in the bathroom, and then
8 subsequently you could hear on the video itself defendant
9 directing Tails and Deborah how to touch each other and watch
10 paint off of one another's face and bodies in the shower, and
11 they follow his direction.

12 This is where that video ends. You're going to
13 hear testimony from both Deborah and Tails that that's not
14 the end of this encounter. That the defendant then tells
15 Deborah to have oral sex with Tails, which she does. And the
16 defendant then has Deborah bend over and has Tails put his
17 penis on her vagina.

18 You're going to hear about another incident
19 involving Tails also, happened when he was about 14 or 15
20 years old, and the entirety of this incident is recorded on
21 video.

22 Defendant had Tails come into the master bedroom
23 and lay on the bed. The defendant then says to Tails, let
24 mama do her thing. Deborah began to perform oral sex on
25 Tails as the defendant asked Tails, does that feel good? The

1 defendant directs additional acts of sexual intercourse in
2 the course of this video. It ends with Deborah performing
3 oral sex on Tails as the defendant has penile intercourse
4 with Deborah both at the same time.

5 You're also going to hear about Ryan. And this is
6 a picture of Ryan when he was about 11 years old in the
7 course of living at that residence over this period of time.

8 When Ryan was approximately 12 or 13, you're going
9 to hear that this an incident of the one-on-one sexual
10 conduct that we've talked about. The defendant began
11 penetrating Ryan's anus with his penis. And you're going to
12 hear Ryan describe to you that this happened on number of
13 occasions prior to Ryan turning 16.

14 When Ryan was about 15, you're also going to hear
15 that the defendant involved Terrie in an incident of sexual
16 abuse of Ryan.

17 The incident is also videotaped, which video you'll
18 see in the course of this trial. The defendant has Ryan go
19 into the master bedroom. The defendant is seen setting up
20 the video camera to record the event. And in fact, prior to
21 the event, the defendant is seen talking to Terrie about
22 bringing Ryan into the room.

23 Once Ryan is in the bedroom, Terrie enters the
24 bedroom, and removes her clothes. Terrie tells Ryan to
25 remove his clothes, to which Ryan responds, no. Terrie then

1 removes Ryan's clothes. Terrie performs oral and vaginal sex
2 with Ryan at that time, and the defendant then positions
3 Terrie and Ryan on the bed, such that Terrie performs oral
4 sex on Ryan while the defendant has penile sex with Terrie at
5 the same time, much the same way was accomplished in the
6 video with Tails.

7 Now, Ryan can be seen in the video looking away
8 while this is happening. You can also see in the video and
9 hear in the video the defendant telling Ryan look at -- look
10 at his mother.

11 Now, there was another occasion also captured on a
12 video involving Ryan, which you're going to see. And you're
13 going to hear from a forensic expert in regards to the
14 recovery of some of these videos.

15 This particular video could not be recovered in
16 video form, but it was recovered in still form. So each
17 frame of the video is laid out, and there's literal hundreds
18 or maybe thousands of frames.

19 You'll see some of those pictures in the course of
20 this trial or those frames, you'll see all of those frames.
21 It will be available to you.

22 Ryan is 15 at the time of this incident. Ryan's
23 called back to the back building. The defendant and Terrie
24 are present. And you're going to hear from both Terrie and
25 Ryan as to what happens next. Terrie begins to remove her

1 and Ryan's clothes. Terrie performs oral sex on Ryan.

2 Then you're going to hear or see -- see and hear
3 that the defendant can be seen exposing his penis, and that
4 the defendant then has Terrie perform oral sex on him and
5 Ryan alternating back and forth between the two.

6 You're also going to hear about Brandon. And this
7 is a picture of Brandon when he was a bit younger in the
8 course of living there. He's about eight or nine years old.

9 We'll be talking about three sexual incidents
10 involving Brandon; two involved Terrie and the defendant.
11 One involved Deborah and the defendant. Only the incident
12 with Deborah and the defendant is on video. We'll talk about
13 that last.

14 First, in regards to Terrie and the defendant, both
15 incidents with Terrie and the defendant occurred in the back
16 building that we've been talk being where the office and the
17 bathroom is back there when Brandon was about 14 years of
18 age.

19 In one incident, Brandon was, you'll hear,
20 expecting to be rewarded for doing well at school. He's
21 called back to the office. He's expecting his reward. What
22 happened was he saw defendant and Terrie in that back office.
23 And instead of the reward, Terrie performed oral sex on him,
24 and he was caused to vaginally penetrate Terrie.

25 In a second incident with Terrie and the defendant,

1 Brandon is walking into the back building. As he walks in,
2 he walks in on the defendant having sex with Terrie. And
3 what happens next? The defendant then had Brandon stay to
4 perform sexual acts on Terrie, which included Brandon
5 touching and vaginally penetrating Terrie.

6 Now, there was also an incident with Deborah and
7 the defendant involving Brandon. And -- oops. And the
8 majority of this incident is on video, and you'll be able to
9 see it in the course of this trial.

10 It happened when Brandon was about 14 years of age.
11 Brandon's first called out to the pool in the back of the
12 house. And you remember from the diagram that there's sort
13 of a yard around this house. And back by that back building
14 there's sort of a doughboy swimming pool back there.

15 So Brandon gets called back to that pool by the
16 defendant, and the defendant and Deborah were in the pool at
17 the time. Brandon's caused to get in that pool, and he does
18 get into the pool. After he gets into the pool, you're going
19 to hear that Deborah and the defendant have sex in the pool
20 in the presence of Brandon.

21 Next, the three of them go into the house. The
22 defendant then calls Brandon back into the master bedroom.
23 The defendant and Deborah are also in the room there naked.
24 This incident is recorded on video, which you'll see.

25 Defendant can be heard on the video directing what

1 would occur. Brandon and Deborah are on the bed where
2 Deborah gives Brandon oral sex and vaginal sex. At the
3 conclusion of this incident, the defendant performed penile
4 penetration on Deborah while Deborah performed oral sex on
5 Brandon at the same time, much the same situation as we
6 discussed with Ryan and Tails.

7 Now, as I indicated, you know, you're going to hear
8 that the defendant was at times violent within this
9 residence. And on one occasion of violence, in early 2004,
10 who's 15 at this time, has a -- sort of a meltdown. Brandon
11 said that he was either getting out of the house or he was
12 going to commit suicide. He seeks out Anita, and he talks to
13 her, and he tells her this is the way I feel. I got to get
14 out of here or I'm going to kill myself.

15 And it's at that point that he tells Anita for the
16 first time that he was being sexually abused.

17 Well, you're going to hear this crushed Anita.
18 Anita's 23 years old at this time. She's still living in
19 that house. She's still suffering abuse. She realize the
20 her brother, Brandon, is being sexual abused. Over all this
21 time, she's efforts that she was making to protect other
22 brothers from being physically abused they're for not,
23 they're for nothing.

24 Not only are they being physically abused, but
25 they're being sexually abused.

1 This turned into Anita's breaking point. She
2 decided that she to get out of that house with Brandon.
3 Anita went to Deborah, Brandon's mother, and told her that
4 they were leaving the residence one way or another.

5 And it's at this point that Deborah indicates that
6 she will assist them. It's Anita who goes to Deborah,
7 Deborah then agrees to assist. Anita will tell you that she
8 was scared to death. Why? You know, she's scared of the
9 defendant, she felt that he had methods to find them if they
10 left.

11 You'll hear that the house had cameras in some
12 common areas. And Anita believed that this allowed the
13 defendant to keep track of everyone in this house. She knew
14 from experience that the defendant would be looking for them
15 if they were not home, if they weren't at school or work.
16 She knew that from experience.

17 Anita and Deborah decide that only Anita, Deborah,
18 and Brandon could be allowed to know of the plan. You're
19 going to hear why. They believed that Tails might tell the
20 defendant if they told him. And they also believed that they
21 couldn't trust Terrie. And if they told Ryan, Ryan might
22 tell Terrie.

23 Anita gathered items. Anita rented a storage unit
24 to put those items in. Deborah found a community safe house
25 and got some type off work. In an early morning in June of

1 2014, Deborah got up for work, as she normally did, the
2 defendant continued to sleep. He remained in bed. And it
3 was at this point that Deborah, Anita, and Brandon snuck many
4 of their things out of that residence, and they left the
5 residence that morning.

6 Now, Deborah and Brandon left their cell phones at
7 the residence, you're going to hear, because they understood
8 the defendant had a tracker on their phones.

9 When the defendant got up, he immediately realized
10 that they were gone. And you're going to hear about this
11 because Terrie is still at the residence, remember? She's
12 going to testify to you as to what happened. That the
13 defendant began viewing the video, that we talked about, and
14 she sees these individuals sneaking out of the residence.

15 The defendant then kicks Terrie and Ryan out of the
16 residence indicating to them in any way that it might appease
17 Deborah to come back.

18 At that time, only the defendant and Tails remained
19 in that Yellowstone residence that we talked about. Deborah,
20 Anita, and Brandon did not come back at that time. But the
21 defendant did attempt to contact them. Tails saw the
22 defendant drafting e-mails to Deborah. Deborah received
23 e-mails addressed from the defendant after they left.

24 The e-mails asked her and the children to
25 communicate with the defendant. In an August 14, 2014

1 e-mail, the defendant appears to reference who would get
2 custody of the children. He points out that he got custody
3 of the children when he got divorced from Terrie because he
4 was not an abuser and the Court saw him fit to have custody
5 of the children.

6 He further indicates that similarly he is not an
7 abuser in the eyes of the law now either. The defendant
8 continues, "I can also say that you will not find any bad
9 things about me, not even a bad picture or bad videos to hold
10 against me because it all requires proof. All I have is
11 rumors, and you can't prove rumors."

12 Deborah does not return to the defendant at that
13 time. You're going to hear that a few days later, September
14 11, 2014, Deborah worked for Cox Cable, and there was an
15 e-mail received by many of her co-employees at Cox Cable.
16 And the e-mail included four still photos, and those four
17 still photos showed Deborah having sexual conduct with the
18 dog.

19 Remember, earlier we talked about the defendant
20 causing that to occur and actually standing in the doorway
21 with a camera.

22 MR. LOPEZ-NEGRETE: Your Honor, could we approach
23 briefly?

24 THE COURT: Sure.

25 (Off-record bench conference.)

1 THE COURT: Go ahead.

2 MR. SWEETIN: So on September 11, 2014, there was
3 an e-mail that was sent to Deborah's workplace to many of her
4 co-workers, and that e-mail had four still photos attached to
5 it, and each of those photos or those two e-mails had two
6 photos each attached to each of the e-mails, and those photos
7 showed defendant -- or Deborah's sexual contact with a dog.

8 They're sent from an e-mail account set up on the
9 phone Deborah left at her residence. And you'll hear from
10 Cox Cable as to how the e-mails came in and what they did in
11 response.

12 On September 14, 2014, a few days later, Deborah
13 receives another e-mail addressed from the defendant. The
14 defendant says in that e-mail, "I thought I would just check
15 in and see how things were going with you. I just wanted to
16 see how all this is working out for you." He continues, "How
17 much of this can you have avoided just by communicating?"

18 He continues, "And we have not even started yet.
19 Can you imagine how ugly things will get if we keep going
20 this route?"

21 And he continues, "Well, instead of spending all
22 that money for a divorce, all we had to do was send a small
23 video clip of you and Brandon, and you would never be seeing
24 me again, and it would be for free."

25 "You would have free room and board and medical,

1 but I don't know about your roommate, though. And if you
2 thought I was bad, that place makes me look like a walk in
3 the park."

4 He continues, "And at the poker run yesterday,
5 there was some talk about a woman having bad pictures at
6 work. And they said, she should go to jail for them. It
7 sounded like they did not like that lady very much."

8 He continues, "I do believe the statute of
9 limitations and having sex with a minor is longer than 20
10 years to file."

11 He continues, "Just because I have to do all of
12 this does not mean that I don't love you. I do. I just
13 think it is sad that I have to do this. I can prove
14 everything. Can you?"

15 Now, Deborah's trying to figure out what to do
16 next. How is she going to handle this? She decides to go to
17 a local divorce attorney and ask for guidance.

18 She describes some of the sexual contact in the
19 household in the context that she was forced to perform the
20 conduct. And as a result, the attorney calls the police.
21 It's her attorney that ends up calling the police. This is
22 the first time the police are contacted by anyone.

23 And the police respond to the attorney's office and
24 get information from Deborah and her attorney, and as a
25 result, Deborah, Anita, and Brandon are subsequently brought

1 in to speak with police detectives individually, and they're
2 all interviewed individually.

3 After those interviews, you're going to hear that
4 the police now have statements indicating that sexual abuse
5 happened on Anita and Brandon, and that it was committed by
6 the defendant.

7 You're going to hear that at this point the police
8 are suspicious as to what Deborah's involvement might be in
9 this, but their investigation was continuing.

10 During the interviews, they received Information
11 indicating the potential of video evidence which documents
12 the abuse, and that video evidence being in that residence,
13 that Yellowstone residence. And just a few hours after
14 receiving that Information, after those interviews, police
15 obtain and exercise a search warrant at the defendant's
16 residence.

17 The defendant and Tails are present at the
18 residence, and you're going to hear about what happens. The
19 police make contact with the defendant during that execution
20 of the search warrant, and the defendant is told that there
21 have been sexual abuse allegations made against him.

22 The defendant talks to police at this point, and he
23 initially said that his wife is the only one he had sex with.
24 He then says, maybe his ex-wife sometimes also. He then
25 says, well, maybe a girlfriend or something.

1 The police tell the defendant that they are
2 investigating family sexual abuse allegations. And the
3 defendant denies having sex with children in the family.

4 The police confront the defendant with allegations
5 that he had anal and vaginal intercourse with Anita and
6 Deborah that was forced on them.

7 The defendant then states that when Anita was 22,
8 he and Anita got a little drunk, and he had sex with Anita
9 and Deborah. He then made a point to say that although, he
10 was drunk, he remembered Deborah putting his penis in Anita's
11 anus.

12 The defendant then admitted that he had sex with
13 Anita on other occasions after he was an adult. And in fact,
14 the defendant said that he started telling her no. The
15 defendant initially denied having sex with Anita and Terrie.
16 The defendant then indicated that he thinks he did have sex
17 with Anita and Terrie when Anita was 23.

18 The defendant denied ever having sex with Brandon.
19 The defendant said that he had never had sex with Deborah and
20 Brandon. He then indicated that he did catch Deborah, when
21 Brandon was about three years old, rubbing and massaging and
22 stroking Brandon's penis.

23 The defendant said that is not cool. The defendant
24 said, he told Deborah that he never wanted to see that again.
25 The defendant then said that something else happened about a

1 year and a half ago. The defendant stated that Deborah and
2 Brandon had total sex in the bedroom, and he said that he
3 came into the bedroom and found them.

4 He said that he didn't say anything, and he
5 watched. The defendant then described in this incident in
6 some detail. He said that he believed Brandon ejaculated in
7 Deborah's vagina. He was asked if he masturbated. He
8 responded to that question by saying he physically had no sex
9 with Brandon and he never forced nobody to do nothing.

10 The defendant did indicate, however, after the
11 encounter between Brandon and Deborah that he did have sex
12 with Deborah.

13 The defendant was asked if there were any pictures
14 taken of this conduct, and he indicated that there was not.
15 The defendant did indicate that there was a red flash drive
16 in the safe in the office that he had. A flash drive is sort
17 of like -- and you'll see it in the course of this trial --
18 just a little thumb drive that's used. It's a memory device
19 that could be put into a computer.

20 He said that on that particular flash drive that
21 there was naked pictures of Deborah doing bestiality with a
22 dog, and he gave some detail of that. He also said that
23 there was pictures of Terrie naked, and also pictures of
24 Terrie and Deborah, as he indicated, quote, "sucking
25 defendant's penis", end quote, he indicated, quote, "standard

1 stuff like that."

2 Police obtained various electronic storage devices
3 from defendant's residence during the execution of this
4 search warrant. And you're going to hear that among those
5 items retrieved was a red flash drive that was in a large
6 safe in the back of the building. And remember -- or the
7 back office. This is the back office area, and this is the
8 safe that we're talking about. And you'll see pictures of
9 this in the areas police served a search warrant, and the
10 flash drive that we're referring to is right here, which was
11 within that safe.

12 Police gained access to that safe by getting the
13 combination from the defendant. Now, you're going to hear
14 that that flash drive was forensically analyzed. And as
15 defendant indicated to police, all the flash drive was a
16 video which depicted sexual conduct between Deborah and a
17 dog. And you'll hear that the photos received by Cox Cable,
18 and the employees at Cox Cable, coworkers of Deborah, in
19 fact, came from this particular video or a video like this.

20 You will hear from a trained forensic analyst that
21 there were a number of additional videos and pictures found
22 on that device. And you're going to hear that many of those
23 items were retrieved from unallocated space on the device.
24 And that forensic expert is going to describe to you what
25 that is, but in a nutshell, what that means is if you have a

1 particular item stored on an electronic device and saved to
2 that device, and it's deleted, the -- what was previously
3 saved is still on that device in unallocated space. It's not
4 allocated, but it's unallocated until it's written over.

5 Now, many of the videos retrieved displayed
6 children in sexual situations with defendant, Deborah, or
7 Terrie. Now, remember at this point in the police
8 investigation, police only have Information about two victims
9 here, and that's Brandon and Anita.

10 Well, now, they get this electronic data. Now they
11 see situations with other children that they can't identify.
12 So what the police do is they ask Anita for assistance in
13 identifying some of the faces that are depicted in these
14 particular sexual recordings.

15 As a result of this review with Anita, they're able
16 to determine the videos that we previously discussed.
17 There's a video of Tails in the shower involving Deborah and
18 the defendant; a video of Tails in the bedroom involving
19 Deborah and defendant; a video of Ryan in the bedroom
20 involving Terrie and the defendant; still photos from a video
21 of Ryan in the office involving Terrie and the defendant; a
22 video of Brandon in the bedroom involving Deborah and the
23 defendant; a video of Tamara in the shower involving Terrie
24 and the defendant; a video of Erin in the shower involving
25 Terrie and the defendant; and photos of Melissa involving

1 Terrie and the defendant.

2 Based upon the evidence collected, police now
3 perform additional interviews with what appears to be
4 additional victims, and that would be Tails, Ryan, Tamara,
5 Erin, and Melissa.

6 Now, upon receiving and interview each of these
7 witnesses, with the exception of Tails, disclose the sexual
8 abuse as we have detailed. You're going to hear that Tails
9 ultimately also discloses, but he only did that after being
10 confronted with the videos themselves prior to another
11 hearing in this proceeding.

12 Now, based upon police review of this video, police
13 determined that Terrie and Deborah were both criminally
14 culpable for their conduct, and they arrested both Terrie and
15 Deborah and charged them with related crimes, for which
16 they've entered into a plea agreement, as we've previously
17 discussed.

18 The defendant was also charged with additional
19 crimes determined through video evidence and witness
20 statements. And you've heard those charges read here in open
21 court. Defendant is charged now with 120 separate crimes for
22 his conduct, which conduct spans more than a decade.

23 He stands charged with sexual acts committed upon
24 Anita, Tails, Ryan, Brandon, Tamara, Erin, and Melissa.

25 Ladies and gentlemen, at the conclusion of the

1 evidence, the State will ask you to find the defendant guilty
2 as charged. Thank you.

3 THE COURT: Thank you, Mr. Sweetin. Ms. Radosta?
4 Oh, Mr. Negrete?

5 MR. LOPEZ-NEGRETE: Your Honor, just one second to
6 put this on.

7 THE COURT: Okay.

8 (Pause in the proceedings)

9 DEFENDANT'S OPENING STATEMENT

10 MR. LOPEZ-NEGRETE: All right. Good afternoon,
11 everybody. I'll give you guys an overview of what we think
12 the evidence will show, so we can kind of get to the chase of
13 our defense.

14 What we're asking you to do is to check the tape
15 because if you do, then you will see what did happen and what
16 did not happen in this case.

17 What we have here is Chris, Terrie, Deborah
18 creating child pornography, and his wives, Terrie and
19 Deborah, willingly abusing their children. And once this
20 disturbing, sick home life came to light, Terrie and Deborah
21 claimed they were victims to save themselves.

22 The tapes speak for themselves. And they will show
23 you what truly and horribly happened. There's no
24 photoshopping in them. There's no inconsistencies. There's
25 no contradictions. They are the objective, unbiased truth.

1 You will have witness testimony, however, in this
2 case, and their testimony will be subjective. Of all the
3 charges that you heard this morning, dozens and dozens are
4 based just on words.

5 And you heard the State talk about these cameras
6 that were supposedly also in the house. But you're not going
7 to see any video evidence of this physical violence that
8 everyone keeps talking about. You're going to hear from the
9 witnesses inconsistencies in their own statements between
10 each witness compared to another as well.

11 You're going to hear contradictions, and you're
12 going to hear that these witnesses obviously have biases, and
13 they do have grudges against our client, Chris.

14 You will hear about ulterior motives, coloring the
15 way they testify what they say happened, and what he did.

16 Two of the main witnesses that you will hear from
17 are Terrie and Deborah. They are completely compromised
18 witnesses. Don't forget, they sexually abused their own
19 children. They did so directly, actually having the sexual
20 contact with their children. They did so willingly, and they
21 did it on tape. Don't forget that when they're testifying.

22 Ultimately, they were investigated by police. They
23 were charged, and what did they do? They cut deals with the
24 State.

25 When we're talking about ulterior motives, you will

1 hear that they are serving a prison sentence, and along with
2 the prison sentence comes the possibility of release. They
3 have the possibility of parole after ten years. In 2024,
4 they could be back in our community. They still have the
5 possibility of having a relationship with their children.
6 These are biases. These are things that they have at take
7 when they're talking about what happened.

8 Deborah, she will describe herself as a victim. A
9 victim of domestic violence. Is she really, though? She
10 wasn't financially dependent on Chris. She actually had a
11 job with Cox Communications for several, several years. She
12 was actually the breadwinner in the household. She had her
13 own transportation. She had her own way of coming and going.

14 And ultimately, there will be no physical objective
15 evidence of these types of injuries that they keep referring
16 to.

17 Also, when we're talking about the police
18 investigation and all that that led up to it, she fled the
19 house, right? But she didn't report any sexual abuse going
20 on. She only talked about this domestic violence. And even
21 though she fled the situation, she actually left behind a
22 couple people, Ryan and Tails.

23 When she talks about the abuse, she files for a
24 temporary protective order only describing prior domestic
25 violence, which was ultimately denied and she never reapplied

1 for it because there was in physical evidence, there was no
2 evidence to back that up.

3 She did consult with a divorce lawyer before the
4 police got involved, and it was only afterwards that the
5 sexual abuse came out where she described herself as a
6 victim. Think about that.

7 She told police that she was coerced. And then she
8 was arrested, charged, and pleaded not guilty to all these
9 charges because, of course, she was a victim, she was force
10 to do these things. She faced dozens of Counts, 28 Counts,
11 various charges, including sexual assault, sexual assault on
12 a minor, use of a minor in producing pornography, open and
13 gross lewdness, child abuse and neglect, conspiracy sexual
14 assault.

15 And on the eve of her own trial, she took a deal.
16 As part of that deal, she had to agree to testify against our
17 client, Chris. And the benefit that she got was dismissing
18 of all the other counts and just had to serve one sentence of
19 ten to life.

20 When it came to her sentencing, what was her
21 explanation? She was a victim. The video clearly shows that
22 she is a perpetrator, not a victim. The video shows no
23 threats, no violence, no hesitation, no protest, and no
24 refusal to do any of these things.

25 In fact, not only through her conduct, but in her

1 words, you hear that she's doing this willingly. At one
2 point, she can be heard telling Brandon, stick your dick in
3 me.

4 Terrie, is she a victim? No. Also not financial
5 dependent. Had her own job as a substitute teacher. She had
6 family in town that she could get recourse from, get help
7 from. And she even divorces Chris at one point. She even
8 had the ability and did move out of the house completely
9 freely.

10 She took Ryan with her out of this horrible
11 situation; and then what? Moved back in, bringing Ryan with
12 her. She again, like Deborah, told police that she was
13 coerced, charged, arrested, charged. She faced dozens of
14 counts or 16 counts; sexual assault, sexual assault with a
15 minor, use of a minor in producing pornography, open and
16 gross lewdness, child abuse and neglect, conspiracy sexual
17 assault.

18 And she also took a deal offered by the State in
19 exchange for the agreement to testify against Chris. And she
20 also got the benefit of having all the other charges
21 dismissed and just have one sentence of ten years to life.

22 Then later, she even tried to take back her deal.
23 At one point, she even, speaking to police, talks about
24 enjoying this sexual activity that she was involved in,
25 perpetrating herself. And that's what the video shows. No

1 threats, no violence, no hesitation, no protest, and no
2 refusal.

3 Now, what does that show you? That they were
4 getting different treatment than Chris. The women were
5 getting different treatment than the man in this situation
6 because they claimed victimhood. You see that in the amount
7 of charges that Chris is facing, 120 counts versus how many
8 charges Deborah and Terrie were facing.

9 And you see in a type of deal that they got, in
10 order to then testify against Chris. We're not fighting with
11 what's obvious in this case. The Sena children clearly,
12 obviously, objectively, we can all say are victims. But
13 ultimately, their testimony suffers because of this horrific
14 trauma that they suffered by the very people who were meant
15 to protect them.

16 This obviously will impact their testimony and
17 gives them profound bias against our client. And it's
18 completely understandable given what they've gone through,
19 what the videos show, but it unavoidably affects their
20 testimony.

21 We're asking you to base your decision on the
22 evidence that proves the charges beyond a reasonable doubt,
23 and only those, that shows exactly what did happen and did
24 not happen in this case. Thank you very much.

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

1 You want to approach?

2 (Off-record bench conference.)

3 THE COURT: Ladies and gentlemen, as I told you
4 yesterday, I have to be some place at 2:00 o'clock. And I
5 was hoping that that wouldn't last too long, but I figured by
6 the time I get back, it would be close to 5:00. And State
7 has indicated that their first witness will be a witness that
8 will probably take a full day.

9 And so what I'm going to do at this time, is I'm
10 going to let you guys start your weekend early, give you the
11 weekend. You need to be back here Monday by 11:00 o'clock,
12 and we'll get started by 11:00.

13 I'd like you to eat lunch before you come, though.
14 And then I'll give you breaks throughout the day. We'll be
15 done by 5:00, unless we go a little further. But I
16 anticipate that that will be our day from 11:00 to 5:00, and
17 I'll give you breaks, but I won't be sending you to lunch.
18 Okay?

19 All right. Once again, ladies and gentlemen,
20 you're admonished not to converse amongst yourself or with
21 anyone else on any subject connected with this trial, or to
22 read, watch, or listen to any report of or commentary on the
23 trial by any person connected with this case, or by any
24 medium of Information, including without limitation,
25 newspapers, television, Internet, or radio.

1 You're further admonished not to form or express
2 any opinion on any subject connected with this trial until
3 the case is finally submitted to you.

4 Just meet outside the courtroom, as you have been
5 always. My Marshal will collect you and bring you in. You
6 all have a good weekend. Okay? All right. Thank you.

7 (Jury exits at 12:59 P.M.)

8 THE COURT: Okay. We're outside the presence of
9 the jury. During the opening statement by the State, the
10 defense approached the bench lodging an objection as to the
11 statement represented by Mr. Sweetin involving the video
12 evidence and the still photos of, I believe, it's either -- I
13 think it was Deborah with an animal.

14 We had a previous motion that was filed by the
15 State to admit that evidence, pursuant to 48.045, and on
16 August 29, 2018, I issued an order and my opinion as to how
17 we would proceed on it.

18 And the way it read was, the contents of the video,
19 based on the testimony of Deborah Sena, would be admitted;
20 however, it will not be allowed the actual video to be shown
21 unless there's some type of defense or opposition denying
22 that the defendant knew or had any Information regarding
23 that.

24 The State had asked the Court in a subsequent
25 proceeding to reconsider that as it wasn't clear to them

1 exactly what -- to what extent they were allowed or what they
2 weren't allowed. And on September 25, 2017, after a hearing,
3 I had issued another clarifying opinion where I granted their
4 motion to admit evidence of the video and the still photos of
5 the -- of Deborah having sex with a dog. However, I would
6 not allow the actual video or the still photos to be
7 presented unless, once again, the defendant challenged the
8 content of the e-mails with regards to that Information.

9 And so, I felt that the -- that the video and the
10 photos themselves were prejudicial, and the probative value
11 of them themselves did not outweigh the prejudice. However,
12 I felt that the content of the e-mails that contained those
13 items was -- the probative value did outweigh the prejudice
14 in light of the fact that it was directly sent by the
15 defendant, his intent to the position to continue to coerce
16 and attempt to require or try to get Deborah to come back to
17 the relationship, and so it gave credibility to that, that
18 she had left the relationship. And it was also an attempt by
19 the defendant -- attempt to discredit her with her employer,
20 and her credibility as to their relationship.

21 So for those reasons, that's why I've included it.
22 If you need to make an additional record or anything, Ms.
23 Radosta, you may.

24 MS. RADOSTA: Your Honor, I mean, our objection at
25 the bench during -- just at the bench, which --

1 THE COURT: Uh-huh.

2 MS. RADOSTA: -- was during the course of the
3 State's opening, but it was our recollection the ruling was
4 different than as we later were able to check, at least the
5 August 28th -- or I'm sorry, August 29, 2018 minutes. We
6 have those in front of us. We don't have the other one,
7 which was almost a year prior, September of 2017, I believe.
8 Is that right or is that 2018?

9 I think the September one predates the August one,
10 Judge.

11 THE COURT: Well, the --

12 MS. RADOSTA: Or the August one is the -- is the
13 clarification.

14 THE COURT: Yeah, and I don't think what I've just
15 indicated that there's any difference.

16 MS. RADOSTA: Anyway, I just don't have the date of
17 the other one in front of me.

18 THE COURT: Okay.

19 MS. RADOSTA: It was our recollection that the
20 Court's ruling was slightly different. So at this point in
21 time, I think we can withdraw the objection that we had.

22 The only thing I would point out, though, is Your
23 Honor made a -- if my understand is Your Honor's ruling is
24 that the content of the video -- or I'm sorry, the content of
25 the e-mail was admissible, but the only content of the e-mail

1 was the still photo itself.

2 THE COURT: Right.

3 MS. RADOSTA: There was no --

4 THE COURT: Well, previously --

5 MS. RADOSTA: There was no --

6 THE COURT: -- previously during the discussion,

7 when I talked about the Information be received from Deborah,

8 that that's how the State had indicated how it would be

9 presented.

10 MS. RADOSTA: Okay.

11 THE COURT: And my understanding is, is that

12 Deborah will be testifying that -- to the circumstances of

13 which was just described by the State, and that there was a

14 -- some still photos or a video sent to her employer

15 involving her sexual acts with a dog.

16 I felt that the video itself, I mean, it --

17 MS. RADOSTA: Well, the video was never --

18 THE COURT: Or the photos of it themselves, I

19 thought was -- is too prejudicial. I -- but I did feel that

20 if your -- if based on the fact that Ms. Sena will be

21 indicated how it occurred, if your client takes the position

22 that he didn't send that, he had nothing to do with that,

23 then the fact that we were able to obtain that information

24 from the search warrant, that would be consistent with what

25 she's representing.

1 And my viewing of the video itself is it's being
2 directed by your client. So for that reason, I felt that it
3 would be admitted because he'd be -- it would show -- go
4 directly to his knowledge, and if he's saying that he had
5 nothing to do with it and didn't know what he was doing, this
6 is something these making up. That's what I'm -- that's what
7 -- the position I took with that.

8 The video itself, I didn't think that it needed to
9 be introduced.

10 MS. RADOSTA: That was --

11 THE COURT: Okay?

12 MS. RADOSTA: Based on the minutes, Judge,
13 that's --

14 THE COURT: Okay.

15 MS. RADOSTA: -- that's our recollection as well.

16 THE COURT: Okay. All right. Okay.

17 MR. SWEETIN: Thank you, Judge.

18 THE COURT: All right. So officers, can you make a
19 note, we're going to call over as well, can you make a note
20 to have -- make sure that Mr. Sena's fed before you bring him
21 here on -- before they transport him here by 11:00 o'clock
22 Monday?

23 MS. RADOSTA: Additionally, Your Honor, Mr. Sena
24 was not allowed to shave this morning before court. If he's
25 not allowed to shave over the weekend or Monday, it's going

1 to be noticeable. So if we can --

2 THE COURT: Is there something saying that he can't

3 shave? He got his hair cut.

4 THE CORRECTIONS OFFICER: They use razors on

5 Tuesday and Thursdays and Sundays --

6 THE COURT: Okay.

7 THE CORRECTIONS OFFICER: -- at the jail.

8 Otherwise, it has to be court ordered that --

9 THE COURT: So, Sunday?

10 THE CORRECTIONS OFFICER: -- he has to shave.

11 THE COURT: Okay. He can do it Sunday, then.

12 MS. RADOSTA: Okay. Or if he -- could you just

13 allow there to be a court order, Judge, that he's -- we're

14 going to be in trial.

15 THE COURT: Well, you just got to let me know. I

16 mean, if he's growing that fast -- he looks fine to me. I

17 mean, he's able to get his hair cut right now, but --

18 MS. RADOSTA: My -- I thought today wasn't a

19 problem, but my thought was --

20 THE COURT: Okay.

21 MS. RADOSTA: -- if he didn't -- can't shave by

22 Monday --

23 THE COURT: That's fine, just --

24 MS. RADOSTA: -- then --

25 THE COURT: -- just let me know.

1 MS. RADOSTA: Yeah.

2 THE COURT: Is it Tuesdays?

3 THE CORRECTIONS OFFICER: Sunday, Tuesdays,
4 Thursdays they --

5 THE COURT: Okay.

6 THE MARSHAL: -- use razors [inaudible].

7 THE COURT: So he can get it done Sunday. Be here
8 Monday, he'll be here Tuesday, so I don't know if they let
9 him do it afterwards, right?

10 THE CORRECTIONS OFFICER: It's -- they do it at
11 night.

12 THE COURT: Oh, okay.

13 THE CORRECTIONS OFFICER: So Sunday night --

14 THE COURT: So he can do it --

15 THE CORRECTIONS OFFICER: -- Tuesday night,
16 Thursday night.

17 THE COURT: -- Tuesday night and then he can do it
18 Thursday night.

19 If you're growing faster than that, we'll take it
20 look at it as it comes. Okay?

21 MS. RADOSTA: I guess last night the problem was,
22 Judge, we ran so late that he missed the opportunity --

23 THE COURT: Okay.

24 MS. RADOSTA: -- last night.

25 THE COURT: Well, if it's growing so fast, and, you

1 know, just keep me -- remind me that, you know, you don't
2 feel like you're looking fine or whatever, and I'll make sure
3 that we get it done. Okay? All right.

4 Okay. So you all have a good weekend. Be prepared
5 to probably -- I don't know how long your witness is going to
6 go, but probably at least two, maybe. I don't know how
7 long --

8 MR. SWEETIN: We can do that, Judge. I was talking
9 to you before because I -- I don't know that we're going to
10 get beyond one. I can --

11 THE COURT: Okay.

12 MR. SWEETIN: -- get another one and bring her
13 down, but I don't --

14 THE COURT: Well, you're going to have six hours.

15 MS. SUDANO: Anita's very long.

16 THE COURT: Okay. Well, it's up to you. I -- if
17 there's somebody -- are you going to try to do it in the
18 order in which you -- in which the allegations are with you
19 have Anita and then, I think, it's --

20 MR. SWEETIN: Yeah.

21 THE COURT: -- Brandon, and --

22 MR. SWEETIN: We're going to start with Anita, but
23 there's going to be some filler witnesses after Anita.

24 THE COURT: Or, I'm sorry --

25 MR. SWEETIN: Yeah.

1 THE COURT: -- Tails then Brandon then Ryan. So is
2 there something after Anita that -- before you go to Tails?
3 MR. SWEETIN: Yeah.
4 MS. SUDANO: Yeah.
5 THE COURT: Is there some short ones?
6 MS. SUDANO: Yeah.
7 MR. SWEETIN: There's some shorter ones.
8 THE COURT: Okay.
9 MR. SWEETIN: Yeah. So I can --
10 THE COURT: All right.
11 MR. SWEETIN: -- I can have --
12 THE COURT: Well --
13 MR. SWEETIN: -- them on hold.
14 THE COURT: -- maybe put them on notice that --
15 MR. SWEETIN: Okay.
16 THE COURT: -- so if we get through Anita a little
17 bit quicker, I mean --
18 MR. SWEETIN: Yeah.
19 THE COURT: All right?
20 MR. SWEETIN: All right. Sounds good.
21 THE COURT: Okay. All right, guys you all have a
22 good weekend, huh?
23 (Court recessed at 1:08 P.M., until Monday,
24 February 4, 2019, at 11:41 A.M.)


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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



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CHRISTOPHER SENA,) No. 79036
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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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:

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Employee, Clark County Public Defender's Office