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IN THE SUPREME COURT OF THE STATE OF NEVADA

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|----------------------|-------------------------------------|
| RAMON MURIL DORADO, |) Supreme Court Case No.: 79556 |
| |) Dist. Ct. Case No.: C-17-323098-1 |
| |) |
| Petitioner, |) |
| |) |
| vs. |) |
| |) |
| THE STATE OF NEVADA, |) |
| |) |
| Respondent. |) |

APPELLANT'S APPENDIX

Volume 8

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APPELLANT'S APPENDIX

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1 A Yes.

2 Q All right. Okay. And do you remember what he was
3 doing on the couch?

4 A Watching TV.

5 Q Okay. And when you got in there, there was a
6 conversation between Ramon and this individual.

7 A Yes.

8 Q And that was in Spanish?

9 A Yes.

10 Q And you said you understand some Spanish but not a
11 lot?

12 A I understood, "Can you go to the store," in Spanish.

13 Q Okay. So you understand -- now, just to back up,
14 did Ramon ask this person to go to the store?

15 A Yes.

16 Q Okay. And do you remember why?

17 A No.

18 Q All right. So he asked this individual to go to the
19 store.

20 A Mm-hmm.

21 Q And he did -- or at least he left the apartment;
22 correct?

23 A Yes.

24 Q Okay. Now, at this time, you were in -- you were in

1 the living room with Ramon; correct?

2 A Yes.

3 Q And at that time, did he try and kiss you? What is
4 the -- or what happened then?

5 A He went into the -- behind me. I guess it was the
6 kitchen area, and used the telephone.

7 Q And he made his phone call.

8 A Yes.

9 Q Did you overhear the phone call?

10 A No.

11 Q Okay. So he made the phone call. And there's a
12 kitchen area and there's a living room area. And do you
13 remember if it's a one-bedroom or two-bedroom or
14 three-bedroom?

15 A I don't recall how many bedrooms. I know there was
16 a bedroom off to the side of me.

17 Q Okay. So now, when he was on the phone, you were
18 sitting on the couch; correct?

19 A Yes.

20 Q Okay. And then he came out and he sat next to you.

21 A Yes.

22 Q Okay. And then did he attempted to kiss you?

23 A No, he started to -- I asked him if we were gonna
24 leave -- if he was ready to head to the bar to meet Joanne and

1 the bartender. And then he got up and started trying to dance
2 with me.

3 Q Okay. So he tried -- was there any music?

4 A I don't recall.

5 Q Okay. Well, he tried to dance with you and you
6 didn't want to dance?

7 A No.

8 Q And you told him you didn't --

9 A Yes.

10 Q -- you didn't want to dance.

11 A I said, "I need" -- "we need to go." "I need to
12 go."

13 Q Okay. And then right after that, what happened?

14 A I started to head towards the door and that's when
15 he grabbed me and picked me up.

16 Q Okay. So he picks you up when you're going to the
17 door.

18 A As I was walking to the door, he grabbed me and
19 picked me up.

20 Q And you said he cradled you.

21 A At first, yes.

22 Q So he was holding you in front of him and you
23 were --

24 A And I was trying to get down.

1 Q But I mean, he was holding you and you were supine.
2 Your face was --

3 A Yes.

4 Q -- up.

5 A Yes.

6 Q And he was carrying you. And you did not want to be
7 carried?

8 A No.

9 Q So you were struggling.

10 A Yes.

11 Q And you were screaming?

12 A I wasn't screaming at that point.

13 Q You were saying, like, basically --

14 A I was just --

15 Q -- "let me go."

16 A Yes.

17 Q -- "put me down." That kind of stuff.

18 And he didn't do that.

19 A No.

20 Q And he carried you in the living room. He carried
21 you from the living room --

22 A Then he tossed me over his shoulders --

23 Q -- to the bedroom?

24 A He tossed me over his shoulders after that. From

1 that position --

2 Q Okay.

3 A -- over his shoulders, and took me to the bedroom.

4 Q Now, when you gave the voluntary statement --

5 A Mm-hmm.

6 Q -- and you said he was carrying -- did you mention
7 anything about him throwing you over his shoulder?

8 A No, I don't recall. I just know --

9 Q Okay. So --

10 A -- that he picked me up and I know I was upside
11 down. You know, hanging over his shoulder at one time.

12 Q And after that, you testified in front of the grand
13 jury.

14 A Yes.

15 Q Remember that?

16 A Yes.

17 Q And that was under oath. Same oath you took here.
18 And --

19 A Yes.

20 Q -- you never said anything about him throwing you
21 over his shoulder.

22 A I did at the grand jury because I recall, like, it
23 was like I was a sack of potatoes.

24 Q You did at the grand jury?

1 A Yes, I know I said that.

2 Q Okay. All right. And at that time you were fully
3 clothed.

4 A Yes.

5 Q And you said you had, I believe -- and if I'm
6 wrong -- you had toreador pants on? No, maybe I'm wrong.
7 Okay. You had pants on. Yes?

8 A Yes.

9 Q Okay. And you said that you had safety pins on the
10 pants because you had recently lost weight.

11 A Yes.

12 Q Okay. In addition to that, you had -- and if I'm
13 wrong correct me -- a tee top?

14 A I can't recall. I know it was probably like a tank
15 top.

16 Q Oh, okay. A tank top. So no sleeves; correct?

17 A No, it had sleeves.

18 Q Okay.

19 A I know I had straps.

20 Q Okay. And you had a bra on.

21 A Yes.

22 Q And you had a jacket over that.

23 A Yes, I had a bolero jacket.

24 Q Okay. A bolero jacket is a short jacket.

1 A Yes.

2 Q And does it fasten by buttons or --

3 A Yes.

4 Q Okay. When you were there with him, was your jacket
5 fastened?

6 A Yes.

7 Q Okay. So the jacket was fashioned (sic) -- excuse
8 me -- fastened. He picked you up. And as he started to walk
9 towards the bedroom, you were struggling.

10 A Yes.

11 Q Okay. When you're struggling, what were you doing?

12 A I was trying to get down and telling him to put me
13 down. At first I thought it was just -- he was just trying to
14 play around, you know?

15 Q Okay.

16 A He wasn't serious at first.

17 Q And then you felt like he was.

18 A And then -- yes. And then that's when he put me
19 over his shoulders and then that's when I was like --

20 Q So when he --

21 A -- that's when it got real.

22 Q He put you over his shoulders --

23 A Yes.

24 Q -- and you were still struggling.

1 A Yes.

2 Q Okay. And he carried you --

3 A Yes.

4 Q -- over his shoulder to his bedroom.

5 A To a bedroom. I don't know if --

6 Q To a bedroom --

7 A -- it's his bedroom.

8 Q -- excuse me.

9 So just so I get the spacing properly --

10 A Mm-hmm.

11 Q -- he picked you up, cradling you. You're trying to

12 get up. Approximately how far did he walk before he threw you

13 over his shoulder?

14 A He maybe -- what -- two, three feet.

15 Q Oh, so --

16 A It wasn't that far of an apartment.

17 Q -- he just cradled you for a while and then he put

18 you over his shoulder.

19 A Yes.

20 Q Okay. And in those days, he was a lot thinner than

21 he is now; right?

22 A He was a lot more muscular.

23 Q Okay. And --

24 A I mean, my husband's --

1 Q -- so he put's you over his shoulder and brought you
2 into the bedroom.

3 A Mm-hmm.

4 Q Correct?

5 A Yes.

6 Q Okay. And then he threw you down on the bed, is
7 that what happened?

8 A He just tossed me down on the bed.

9 Q Okay. He tossed you down on the bed. So you're up
10 on his shoulder --

11 A Like a --

12 Q -- did he like flip --

13 A Yes.

14 Q -- you off so you landed --

15 A Yes.

16 Q -- up on your back.

17 A Yes.

18 Q Okay. And at that time, did he attempt to kiss you?

19 A Yes.

20 Q Okay. And you told him no.

21 A Yes.

22 Q And then at that time you're still fully clothed.

23 A Yes.

24 Q And he attempted to take your clothes off.

1 A Yes.

2 Q Okay. And when he did, he went -- and the way I
3 heard it -- he went behind you or he put his hands behind you
4 and he pulled up your jacket and tank top.

5 A No, before that I'd got -- I started to struggle and
6 I started to walk -- get to his -- go towards the door and he
7 slammed me up against the wall and pinned me up against the
8 wall.

9 Q Okay. Is that --

10 A And that's where he proceeded to try and pull my
11 shirt over my head.

12 Q Okay. So you were standing up at that time.

13 A Yes.

14 Q Okay. And he reached behind you to pull your
15 shirt --

16 A Yes.

17 Q -- over your head.

18 A Mm-hmm.

19 Q And that's a "yes"? Sorry.

20 A Yes.

21 Q Okay. And then when he pulled your shirt, he pulled
22 the jacket and the shirt over your head.

23 A Yes.

24 Q And when he pulled it over your head, could you see

1 or he pulled it all the way over your head?

2 A It was -- I could see partially, not all the way. I
3 was kind of entangled in it.

4 Q Okay. And you were standing up.

5 A And that's how --

6 Q And at that time --

7 A -- I don't recall how -- and then we wound up on the
8 floor.

9 Q Okay. So you didn't go back on the bed. You wound
10 up on the floor?

11 A Yes.

12 Q And he tried to take your pants off?

13 A Yes.

14 Q Okay. And is that -- and correct me if I'm wrong,
15 that's when one of your legs came out of your pants?

16 A No, he was trying to struggle to take my pants off.
17 He was laying on top of me. I felt my pin stab me. And then
18 that's when I grabbed my safety pin and I stabbed him in the
19 arm or the --

20 Q You stabbed him on his hand.

21 A -- the hand -- the back of his hand and his
22 shoulder. Shoulder, if I recall. And that's when I kind of
23 just blanked out for a minute.

24 Q Okay. So you stabbed him in his hand. You stabbed

1 him in his shoulder. And then you blacked out.

2 A I didn't black black out. I just kind of just
3 closed my eyes and just -- and then I can't recall -- the next
4 thing I knew is my pants were -- half of my pants were off and
5 my pantyhose were off.

6 Q Okay. So to get there, you said half your pants
7 were on. Does that mean one leg was off?

8 A That one leg was out, yes.

9 Q Okay. And what leg was that?

10 A It was my -- I can't recall which one. I just know
11 it was out.

12 Q Okay. And so one leg was out. Now, at -- the leg
13 that was out, were your pantyhose on or off?

14 A Off.

15 Q So that leg came out and the --

16 A They were torn.

17 Q -- pantyhose from that leg were off.

18 A Yes.

19 Q But the pantyhose in the other leg and that -- the
20 other pant leg was still on.

21 A Yes.

22 Q Half way.

23 A I kept struggling to pull -- keep that side of my
24 pants up.

1 Q So you tried to pull it up; he was trying to pull it
2 down?

3 A Yes.

4 Q Okay. And then, eventually, your pants came off;
5 correct?

6 A No, not all the way.

7 Q So your pants were down.

8 A Yes.

9 Q And at that time --

10 A Well, he never fully got my pants all the way off of
11 both legs.

12 Q Okay. Just off the one leg.

13 A Yes.

14 Q And if that's the case, he never got your pantyhose
15 fully off either.

16 A He got them all -- they were torn on one side.

17 Q They were torn?

18 A Yes. That's how he got my leg out of one side.

19 Q Okay. Were you --

20 THE COURT: Counsel -- Counsel, it's the evening.

21 MR. YAMPOLSKY: Right now? Okay.

22 THE COURT: Ladies and gentlemen, we're going to
23 break for this evening.

24 During this recess you're admonished not to talk or

1 converse among yourselves or with anyone else on any subject
2 connected to this trial or read, watch, or listen to any
3 report of or commentary on the trial or any person connected
4 with this trial by any medium of information, including
5 without limitation: Newspapers, television, and radio, or
6 Internet, or form or express any opinion on any subject
7 connected with this trial until the case is finally submitted
8 to you.

9 You're not to do any experiments or investigation
10 regarding any matters raised in this trial, nor are you to
11 post on any social media forums or anything in regards to
12 social media.

13 We will see you back here tomorrow at a quarter to 11:00.
14 Please leave your books here, your pencils or pens. All your
15 personal belongings, of course your ID badge, please take with
16 you. We'll see you back here at 10:45 a.m.

17 THE MARSHAL: All rise for the jury.

18 [OUTSIDE THE PRESENCE OF THE JURY]

19 THE COURT: Counsel, anything that needs to come
20 before the bench before we break for this evening?

21 MS. CRAGGS: No, Your Honor, not from the State.

22 MR. YAMPOLSKY: No, Your Honor.

23 THE COURT: Okay. Ma'am, you may be excused.

24 THE WITNESS: Okay.

1 THE COURT: Thank you. Again, no contact with the
2 jury. Please, if you see them in the hallway or in the
3 elevator, please wait for them and take another elevator.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

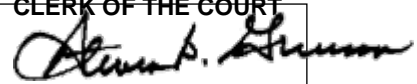
6 [Hearing concluding at 5:02 p.m.]

7 *****

8 ATTEST: I do hereby certify that I have truly and
9 correctly transcribed the audio/video proceedings in the
10 above-entitled case to the best of my ability.

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ALLISON SWANSON, CSR NO. 13377
CERTIFIED SHORTHAND REPORTER
FOR THE STATE OF CALIFORNIA



1 RTRAN

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,)
6 Plaintiff(s),) CASE NO. C-17-323098-1
7 vs.)
8 RAMON MURIL DORADO,) DEPT. NO. XXIX
9 Defendant(s).)
10 _____)

11 BEFORE THE HONORABLE DAVID M. JONES, DISTRICT COURT JUDGE

12 WEDNESDAY, JUNE 19, 2019

13 RECORDER'S TRANSCRIPT OF HEARING:
14 JURY TRIAL - DAY 3

17 APPEARANCES:

18 For the Plaintiffs: GENEVIEVE CRAGGS
19 BRYAN SCHWARTZ

20 For the Defendants: MACE J. YAMPOLSKY
21 JASON MARGOLIS

22
23 RECORDED BY: MELISSA MURPHY-DELGADO, COURT RECORDER
24 TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

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1 Las Vegas, Nevada, Wednesday, June 19, 2019

2 [Case called at 11:16 a.m.]

3
4 [OUTSIDE THE PRESENCE OF THE JURY]

5 THE COURT: Counsels, are we ready to begin?

6 MS. CRAGGS: Yes, Your Honor.

7 MR. YAMPOLSKY: Yes.

8 THE COURT: You have anything that needs to come
9 before the bench?

10 MS. CRAGGS: No, Your Honor.

11 THE COURT: So I can get my jury in here?

12 All right. Let's get our jury in here.

13 MR. YAMPOLSKY: Oh, the scheduling.

14 MS. CRAGGS: Oh, I guess one thing, Your Honor. We
15 have our SANE nurse coming in. She needs to try to be back by
16 1:00 o'clock. So I was hoping we could have her before the
17 lunch break.

18 THE COURT: Depends on how long we're gonna be with
19 the witness who's currently on the stand. I don't know.

20 MS. CRAGGS: In the discussions with Mr. Yampolsky,
21 I think we should be okay. Depending, obviously, on how --

22 THE COURT: So what you're telling me is I'm gonna
23 tell my staff they're not eating lunch today, is what you're
24 saying?

1 MS. CRAGGS: No, of course not. I was thinking
2 maybe we could take a lunch break at like 1:00 o'clock --
3 12:50-ish?

4 THE COURT: Pay our DA hours. Okay. We can make it
5 work.

6 MS. CRAGGS: Thank you.

7 [DISCUSSION OFF THE RECORD]

8 THE MARSHAL: All rise for the jury.

9 [IN THE PRESENCE OF THE JURY]

10 THE MARSHAL: The jury is all present, Your Honor.

11 THE COURT: Counsel, stipulate to the presence of
12 the jury.

13 MS. CRAGGS: Yes, Your Honor.

14 MR. SCHWARTZ: Yes, Your Honor.

15 MR. YAMPOLSKY: Yes, Your Honor.

16 THE COURT: Ladies and gentlemen, good morning.

17 THE JURY: Morning.

18 THE COURT: Sorry for the delay. There was a little
19 bit of overflow on my part and then I guess some confusion as
20 to the time that we were starting this morning. We'll make
21 sure, in the afternoon, when we talk about it, we're gonna
22 make sure everybody understands when you're gonna start
23 tomorrow morning.

24 Counsel, call your witness.

1 MS. CRAGGS: Your Honor, Michelle Lehr.
2 THE COURT: Ms. Lehr.
3 MS. CRAGGS: In the conference room.
4 THE COURT: Ma'am, I'll just remind you, you're
5 still under oath.
6 THE WITNESS: Yes, sir.
7 THE COURT: Please be seated.
8 Counsel, your witness.
9 MICHELLE LEHR,
10 [Having been called as a witness and being previously duly
11 sworn testified as follows:]
12 CROSS-EXAMINATION (resumed)
13 BY MR. YAMPOLSKY:
14 Q Ms. Lehr, yesterday, you testified that your
15 pantyhose were ripped.
16 A Yes.
17 Q And this happened about 7:45, 8:00 a.m.; correct?
18 A Maybe a little bit later.
19 Q Okay. So maybe 8:30 a.m.?
20 A Mm-hmm.
21 Q Yes? Is that a "yes"?
22 A Yes.
23 Q You have to answer out loud for the Court --
24 A Yes.

1 Q Okay. And you spoke to -- you gave an interview to
2 detective -- and I think his name's pronounced Hnatuick -- at
3 approximately ten to 3:00 p.m. that day; correct?

4 A I don't recall the time it was.

5 Q All right. Well, you did interview with him later
6 than that day?

7 A Yes, I did --

8 Q I mean, later that day; correct?

9 A -- I am aware of him taking my statement, yes.

10 Q Right. And you'd agree that your memory's probably
11 better closer to the time something happened than --

12 A Oh, definitely.

13 Q -- 20 years later?

14 A Yes.

15 Q Okay. Now, when you spoke to him, you wanted to
16 tell the truth --

17 A I did.

18 Q -- right?

19 And you wanted your statement to be accurate.

20 A I did.

21 Q And complete.

22 A I did.

23 Q Okay. Now, in your statement, you didn't mention
24 that your pantyhose were ripped.

1 A Well, I know they had to have been. I know they
2 were.

3 Q Okay. But listen to my question --

4 A I understand. Yes.

5 THE COURT: Okay. Hold -- ma'am, one second.

6 Counsel, please ask the question. You made a statement.
7 Ask her the question.

8 BY MR. YAMPOLSKY:

9 Q Okay. When you spoke to -- when you gave your
10 statement, the statement that was taped, you never said
11 anything -- you never said that your pantyhose were ripped;
12 correct?

13 A According to the statement, yes, that I took. I
14 cannot recall everything I said back then. There's a lot of
15 edits on that statement and blank spots from --

16 Q Okay. So just --

17 A So I cannot recall if I did or not, from --

18 Q All right. Would it refresh your recollection if I
19 showed you --

20 A I read that, yes. I'm aware of what I said in
21 there. But there's a lot of missing blank spots in that
22 statement.

23 Q Okay. Well, my question is, would it refresh your
24 recollection if I showed you and had you read your actual

1 statement?

2 A I read it. I know what I said.

3 THE COURT: Okay. Ma'am, if you read it right now,
4 if he gave you an opportunity to read it, do you believe it
5 would at least refresh your recollection as to what you said
6 back then -- understanding that you believe that that
7 statement's not complete, that there are missing portions of
8 it or there's gaps -- but would it refresh your recollection
9 as to, at least, what you believe you said back then?

10 THE WITNESS: Yes.

11 THE COURT: Okay. Go ahead, Counsel.

12 MR. YAMPOLSKY: May I approach?

13 THE COURT: Approach.

14 MR. YAMPOLSKY: Genevieve.

15 MS. CRAGGS: Thank you.

16 THE COURT: And, ma'am, what he's gonna do, he's
17 gonna show you certain portions. I want you to read them to
18 yourself, not out loud, but to yourself. And then he'll ask
19 you a question.

20 MR. YAMPOLSKY: Okay. And, Your Honor, based on my
21 reading, I think she needs to look at the entire statement,
22 unfortunately.

23 THE COURT: Well, are you gonna ask her questions
24 about specific portions of it or gonna --

1 MR. YAMPOLSKY: Well, yeah. The portion that --

2 THE COURT: All right. Well, let -- then let's
3 make -- let's show her that portion of it and ask her
4 questions about that portion of it, rather than have her read
5 a five-page document.

6 MR. YAMPOLSKY: All right. Well, Your Honor, the
7 problem is the questions I ask is -- the way I read it, she
8 didn't say. So she didn't say in the entire transcript --

9 THE COURT: Okay. How long is this portion?

10 THE WITNESS: It's about 12 pages, Your Honor.

11 THE COURT: All right. Ma'am, go ahead and read
12 this thing to yourself.

13 THE WITNESS: Is this the area in question you're
14 asking me about?

15 THE COURT: Just read over, then he'll ask you
16 direct questions; okay? And once you're done reading it over
17 to your satisfaction, just go ahead and let me know you're
18 done.

19 THE WITNESS: Can I show you parts?

20 THE COURT: Okay. No, what I'm just gonna do --
21 what you'll do is you'll be able to point that out. Let's go
22 ahead and just read it and then he'll ask you direct questions
23 in regards to whether or not that refreshes your recollection
24 or direct questions in regards to what you may or may not have

1 said; okay?

2 THE WITNESS: Mm-hmm.

3 All right. Go ahead.

4 BY MR. YAMPOLSKY:

5 Q You finished?

6 A Mm-hmm.

7 MR. YAMPOLSKY: May I have it, please?

8 THE COURT: Go ahead.

9 BY MR. YAMPOLSKY:

10 Q Okay. In the statement that you just reviewed --

11 A Mm-hmm.

12 Q -- which is a transcript of the statement you gave
13 in 1999, same day of the alleged incident.

14 A Yes.

15 Q You don't mention anything about ripped pantyhose in
16 here?

17 A I cannot recall if that was mentioned in there.
18 Like I stated, there's missing words in between -- or blank
19 spots from the transcript. Whoever transcribed that or did
20 the typing on that did not get all of my words in there.

21 Q Okay. But --

22 A So I don't know what might be missing. I cannot
23 recall from that day if I did say that or not. But as I --
24 from -- per that statement, it's not in there.

1 Q Okay. Now, in addition, there's nothing in that
2 statement that says Mr. Dorado threw you over his shoulder;
3 correct?

4 A No.

5 Q And there's nothing in there that said he carried
6 you like a sack of potatoes.

7 A I said that later. They asked me to describe how I
8 was carried and what happened. And that was how I was able to
9 refer to it.

10 Q Okay. But in this statement, there's nothing that
11 says he threw you over --

12 A No.

13 Q -- or he carried you like a sack of potatoes?

14 A Not at that time, no.

15 Q Okay. Now, you testified that he cradled you;
16 correct?

17 A He cradled me at the -- when I was going to the door
18 and turned around. And as he was turning around, that's when
19 he put me over his shoulders.

20 Q No. No. I'm not asking about that. Before he put
21 you over the shoulder, you testified that he was carrying you.
22 And the term you used is "cradled"; correct?

23 A That's the best description, yes, I could describe
24 at the time.

1 Q And what that means is he was standing up and you
2 were basically laying on his arms facing up.

3 A I was trying to describe how he scooped me up. When
4 I was in a cradled position for a brief moment, yes.

5 Q Okay. So it was just a brief moment?

6 A Before he put me over his shoulder.

7 Q Okay. Then he -- and when he put you over his
8 shoulder, did he put you down first?

9 A No.

10 Q So he just flipped you over his shoulder.

11 A Mm-hmm.

12 Q Yes?

13 A (Witness nods head)

14 Q And when you -- were you facing front, where -- the
15 way he was looking or back?

16 A Behind.

17 Q Okay. And then he carried you into the other room?

18 A Yes.

19 Q Okay. I want to switch gears and talk about the
20 timeline that that happened.

21 A Mm-hmm.

22 Q So you said -- and if I say it wrong, please correct
23 me. You said that this incident took place basically between
24 7:45 and 8:30 a.m.

1 A No, on the statement, I got there and I checked the
2 time with Ramon. At the time it was about 8:30 -- 8:30, 8:45
3 when we were in the apartment --

4 Q Okay.

5 A -- is what I stated.

6 Q And --

7 A And that's in that statement.

8 Q Right. And you left approximately 8:45?

9 A No, I did not leave at approximately 8:45. I got
10 home to see -- to Candy's house at 10:20. Is -- that's all I
11 can recall. It was the time I got to Candy's house, I looked
12 at the time and it said 10:20.

13 Q Right. So what you're saying is that the encounter
14 with Mr. Dorado took approximately an hour and a half?

15 A Between the time that I arrived there and the time I
16 got home?

17 Q No. No. No. The actual encounter. So from the
18 time you came into the apartment and he picked you up and he
19 cradled you till the time you left, approximately how much
20 time was that?

21 A I cannot recall the total amount of time, no. I
22 just know the time that I arrived at his apartment and the
23 time I arrived to Candy's house.

24 Q And Candy's house is pretty close to his apartment,

1 correct?

2 A Candy's house was off of Bonanza and Eastern -- or
3 little bit past that.

4 Q Okay. So would you consider that close? Far away?

5 A I'd say a good ten-minute drive. Ten-minute drive.

6 Q Okay.

7 A Or more.

8 Q All right. And after that, you came to Candy's
9 house approximately 10:20; correct?

10 A Yes.

11 Q And then you -- you contacted the police department;
12 correct?

13 A I sat down and tried to get myself together. I
14 recall that. And checked on my son. And I know we arrived at
15 the substation around 12:00.

16 Q Around 12:00?

17 A That's what I recall, yes. I know it was in the
18 afternoon. I know it wasn't late, I know that. By the time I
19 was done with everything, from the time that I got to the
20 police station to the time that I got home to my actual house
21 on Decatur, it was well after 7:00, 8:00 o'clock at night.

22 Q Okay. So --

23 A It doesn't state that in there.

24 Q So just at -- in your voluntary statement -- I'll

1 show it to you again if you need it -- it says that the
2 statement started at -- wait a minute -- 2:50. But it said, I
3 believe, military time. Does that comport with your
4 recollection?

5 A I don't recall what time they took it. That was
6 20 years ago. I just know that when I got to the police
7 station, I sat there for about a good 40 minutes before
8 someone talked to me or I was able to take my statements.

9 Q Okay. So you don't remember if the statement was
10 taken at 2:50 p.m.?

11 A No, I don't recall.

12 Q Okay. And you know that 2:50 p.m. is the same thing
13 as 14:50 --

14 A Yes.

15 Q -- military time; correct?

16 A Mm-hmm.

17 Q Would it refresh your recollection if I showed you
18 the statement where it talks about the time it started?

19 THE COURT: Counselor, she's already said she
20 doesn't remember. So you're gonna ask her whether or not the
21 report says that, a different time? That's different than
22 what she recalls.

23 MR. YAMPOLSKY: Well, that's what I wanted -- I want
24 to show her that, Your Honor.

1 THE COURT: Okay. Ma'am, will it assist you,
2 looking at your report or at least the report by the police
3 department, as to when they wrote down the statement?

4 THE WITNESS: Well, I have to go by that. I can't
5 recall when -- you know, I was just -- remember the time that
6 I got around --

7 THE COURT: Do you have reason to dispute that
8 that's when that report at least stated it was taken?

9 THE WITNESS: Not that I know -- no.

10 THE COURT: Move on, Counsel.

11 BY MR. YAMPOLSKY:

12 Q Okay. So you got to Michelle's house approximately
13 10:20; correct?

14 A That would be Candy's house.

15 Q I'm sorry.

16 A That's okay.

17 Q Candy's house, approximately 10:20. And then after
18 that, you said you went to the police station at approximately
19 12:00 noon?

20 A It was -- yes, it was afternoon. I know it was
21 after -- around 12:00.

22 Q And according to this statement, it was taken at
23 2:50.

24 A Just because the statement was taken at 2:50 does

1 not mean that I arrived at the police station at that time.

2 Q No. No. And I --

3 A That's what I get to --

4 Q I'll get to that. Understand that. So the
5 statement was taken at 2:50. And you arrived sometime
6 earlier.

7 A Yes.

8 Q So would you say that, prior to this statement, you
9 took -- you were at the police station approximately two and a
10 half hours?

11 A Yes.

12 Q Okay. And during that two and a half hours, what
13 did you do?

14 A I recall having -- driving with one of the
15 detectives over to show them where his house -- where the
16 apartment was.

17 Q And the apartment was about 15 minutes from the
18 police station?

19 A I can't recall where. I just know the police
20 station was on Saint Luis.

21 Q Okay. And how long did you stay at the apartment
22 with the police officer?

23 A I waited in the car.

24 Q Well, how long were you there?

1 A I don't recall.

2 Q Okay. Can you give me your --

3 A I can't --

4 Q -- best estimate?

5 A I cannot remember. I mean --

6 Q Okay.

7 A -- it was 20 years ago.

8 Q That's fine.

9 A I just remember all the time from the time I got
10 home.

11 Q Okay. And so then you gave this statement to police
12 officer Hnatuick. And that's H-N-A-T-U-I-C-K.

13 A Yes.

14 Q Right?

15 MR. YAMPOLSKY: I'm sorry?

16 THE COURT: He said to someone sneezed.

17 MR. YAMPOLSKY: Oh, bless you.

18 BY MR. YAMPOLSKY:

19 Q And according to this, statement ended approximately
20 3:05. Does --

21 A I can't recall.

22 Q You don't know. Let me ask you this: Do you
23 remember if the statement took about 15 minutes?

24 A I can't remember. I just know I gave a statement.

1 I told 'em what happened.

2 Q Okay. Now, after you gave the statement, you went
3 back to Candy's apartment?

4 A No, they took me to the UMC Medical Center.

5 Q And at the UMC Medical Center, you were given what's
6 called a SANE exam; correct?

7 A Yes.

8 Q Okay. And before they gave you the SANE exam, they
9 take what's called your medical history; correct?

10 A Yes.

11 Q Okay. And when they -- the medical history, they
12 ask questions like how tall are you, that type of stuff?

13 A Yes.

14 Q And they asked you how much you weighed.

15 A I don't recall how much I weighed back then.

16 Q But -- no. No. My question is --

17 A Yes, I'm sure -- yes, they did.

18 Q Okay. But they didn't weigh you?

19 A I have no idea if they did.

20 Q Okay. All right.

21 MR. YAMPOLSKY: Court's indulgence.

22 THE COURT: Go ahead.

23 BY MR. YAMPOLSKY:

24 Q Okay. And just so I'm clear, from the time you left

1 Mr. Dorado's apartment, you arrived at Candy's at
2 approximately 10:20 a.m.; correct?

3 A Yes.

4 Q Okay. And you said it was about a ten-minute drive.

5 A Approximately. I --

6 Q Okay. So that means that you were at the apartment
7 until approximately 10:10 or let's say 10:00 o'clock.

8 A I am not sure.

9 Q Okay.

10 A I just know that by the time I got -- I parked my
11 car and got up to her apartment, it was 10:20 on the clock.

12 Q And it took about ten minutes; right?

13 A I'm assuming, yes.

14 Q Okay.

15 MR. YAMPOLSKY: I have nothing further.

16 THE COURT: Redirect.

17 MS. CRAGGS: Thank you, Your Honor.

18 And the Court's indulgence briefly.

19 THE COURT: Go ahead.

20 MS. CRAGGS: And, Your Honor, I can approach the
21 clerk, I'm gonna request that the voluntary statement we've
22 been discussing be marked.

23 THE COURT: Go ahead.

24 MS. CRAGGS: Thank you.

1 May I approach the witness, Your Honor?

2 THE COURT: You may.

3 REDIRECT EXAMINATION

4 BY MS. CRAGGS:

5 Q Michelle?

6 A Yes, ma'am.

7 Q I'm going to show you what has been marked as
8 State's Proposed Exhibit 27.

9 A Mm-hmm.

10 Q Do you recognize what that is?

11 A Yes.

12 Q Okay. And what is that?

13 A That was a statement that I gave to the detective on
14 the day that that happened.

15 Q Is this the statement that you and Mr. Yampolsky
16 were discussing?

17 A Yes.

18 Q Okay. And this was from, it looks like
19 April 24th, 1999.

20 A Yes.

21 Q And that was at 2:50 in the afternoon?

22 A Yes.

23 Q Okay. And have you had a chance to look at this
24 statement?

1 A Yes.

2 Q And other than the blanks that you've discussed with
3 us, is this a fair and accurate copy of what it was that you
4 said, as far as you can remember, 20 years ago?

5 A Yes.

6 MS. CRAGGS: Okay. Your Honor, I'm gonna request to
7 admit State's Proposed 27. And I don't believe there's an
8 objection.

9 MR. YAMPOLSKY: I have no objection, Your Honor.

10 THE COURT: Okay. Counsel, is there anything in
11 there in regards to social security numbers and anything else
12 that need to be redacted?

13 MS. CRAGGS: Yes, Your Honor.

14 THE COURT: Okay. Before we submit it to the jury,
15 make sure it gets redacted.

16 MS. CRAGGS: Absolutely.

17 THE COURT: The Exhibit 27 will be admitted as
18 evidence, with the caveat that those identifying markers will
19 be omitted before it gets to the jury.

20 MS. CRAGGS: Thank you, Your Honor.

21 THE COURT: Thank you.

22 [STATE'S EXHIBIT 27 ADMITTED.]

23 BY MS. CRAGGS:

24 Q Michelle, talking about the blanks that you had

1 mentioned to Mr. Yampolsky, what do you mean by "blanks in the
2 statement"?

3 A I'm trying -- there's missing statements -- it's
4 missing -- it breaks up the words or what I said. There's --
5 there's no -- it stops -- like, a sentence stops in mid and
6 then it just -- there's nothing in between. I don't know how
7 to explain it. But it's just got -- my words are missing.

8 Q So it appears that there might --

9 A Broken up sentences.

10 Q I'm sorry?

11 A It looks like it's broken up sentences or parts of
12 the transcript are missing.

13 Q Okay. So it appears that, potentially, whoever
14 transcribed it wasn't able to transcribe some specific words?

15 A Yes.

16 Q Okay.

17 A Groups, areas.

18 Q And just to clarify, so when you're talking about
19 the pantyhose, you don't remember whether you said that at the
20 time, but you're also not sure if maybe that was one of the
21 blanks.

22 A Yes.

23 Q Okay. But as you sit here today, you remember that
24 they were ripped.

1 A Yes.

2 Q Okay. And the detective that you spoke with --

3 A Uh-huh.

4 Q -- on April 24th, 1999, do you know if he was the
5 detective that -- I think you testified on direct that you
6 gave some of your clothes to the police?

7 A Yes, they took my clothes.

8 Q Okay. So would that mean, then, that that detective
9 actually had your pantyhose in his possession as well?

10 A Yes.

11 Q Okay. And I wanted to talk a little bit about the
12 cradle position situation.

13 A Mm-hmm.

14 Q And then the sack of potatoes.

15 A Yeah.

16 Q Not everybody uses that phrase.

17 A Phrase.

18 Q Can you describe what you mean by when you said
19 "sack of potatoes."

20 A Just like when a person from, like, a farm, they
21 pick something up and they -- at first they have it and then
22 they just toss it over their shoulders.

23 Q Okay.

24 A That's just being from the south, that's how I just

1 see -- I saw things.

2 Q Being from the west, I know that one too.

3 Did you talk about, in the statement that was just
4 entered, State's 27, about the Defendant picking you up in
5 some sort of way?

6 A Yes, I did. He -- I know in that statement I
7 said -- it says "cradled." Yes. He picked me up and he
8 scooped me kind of and had me in a cradled position for a
9 minute. And then put me over his shoulders.

10 Q Do you remember why you didn't say that at the time
11 you were talking to the detective?

12 A I can't recall. All I could think of is that I was
13 just -- it was in the moment.

14 Q Okay. Would you say that -- at the time that you
15 were talking to the detective, describe your emotional state,
16 if you can remember.

17 A I was pretty exhausted, frustrated. I just wanted
18 to be done.

19 Q And then just to talk a little bit about the
20 timeline, so in terms of the times that you do remember --

21 A Mm-hmm.

22 Q -- and I understand it was 20 years ago -- what are
23 the times, just to be clear, that you do kind of remember as
24 benchmarks from that night and then into that next day?

1 A I remember the time that we got to the
2 Silver Saddle, approximately the time that I returned back
3 from the Silver Saddle after seeing my -- checking on my son,
4 and then being in the parking lot because the bartender got
5 off -- and it was daylight. It was probably about 7:00 to
6 7:30.

7 Q Okay.

8 A And then getting to his apartment. 'Cause I
9 remember looking at -- asked him what the time was and him
10 saying 8:30 and thinking, "Okay. Well, 15 minutes," you know
11 approximate time. So those are the things I -- and for sure
12 the 10:20 because I remember walking into Candy's house,
13 seeing the clock.

14 Q Okay. So the question I have is the Silver Saddle
15 and the apartment you went to are pretty close -- right -- in
16 terms of location?

17 A Yes.

18 Q Okay. How far away would you say they were, if you
19 can remember?

20 A I would say maybe a mile, two miles.

21 Q Okay.

22 A Maybe. You know, just because one way so you have
23 to kind of backtrack.

24 Q So you're -- so were you at the Defendant's

1 apartment or his friend's apartment for a period of time
2 before you asked what time it was?

3 A I can't recall that part.

4 Q Okay. 'Cause my -- I'm trying to find out -- so you
5 were at the Silver Saddle and you remember leaving around
6 7:30.

7 A Mm-hmm.

8 Q But then, at the Defendant's apartment or his
9 friend's apartment, you remember it being 8:30.

10 A Yeah, it might have been later, when we were in the
11 parking lot of the Silver Saddle, but that's how I recall it.

12 Q Okay. So you're not sure exactly what time, but it
13 was around those times.

14 A Yes.

15 Q Okay. Gotcha.

16 Michelle, in the last 20 years, how has what happened to
17 you affected your life, if at all?

18 A It took me a while --

19 MR. YAMPOLSKY: Objection, Your Honor. That's
20 irrelevant, whether it happened or not.

21 THE COURT: Okay.

22 MS. CRAGGS: Your Honor, [indiscernible] her
23 credibility, just being questioned on cross-examination.

24 THE COURT: We went into, a little bit, her

1 financial issues. I'll allow it.

2 Limited, Counsel.

3 MS. CRAGGS: Thank you.

4 THE WITNESS: I'm sorry?

5 BY MS. CRAGGS:

6 Q So I said, how has it affected your life, if at all,
7 in the last 20 or so years?

8 A I didn't -- I was kind of maybe -- it made me a lot
9 wiser, I guess you could say. I -- mistrusting of people. I
10 didn't -- I was very cautious after that. I didn't -- my -- I
11 didn't meet anybody -- the next person I was with was my
12 younger son's dad. That was about a six-year difference.

13 Q Do you feel emotional about what occurred at this
14 point in your life?

15 A Yeah and no. I mean, I kind of just blocked it out
16 for a while until I got the call from -- that they had
17 discovered -- or they had a match.

18 Q And that was a couple years --

19 A Two years ago.

20 Q Okay.

21 A Yes.

22 Q And when you say "blocked it out," what do you mean
23 by that?

24 A It kind of just compartmentalized it and just don't

1 think -- didn't think about it. I had kind of moved on at the
2 time.

3 MS. CRAGGS: Court's indulgence.

4 THE COURT: Go ahead.

5 MS. CRAGGS: I pass the witness, Your Honor. Thank
6 you.

7 THE COURT: Any recross on that, Counsel?

8 MR. YAMPOLSKY: Yes, Your Honor.

9 RE CROSS-EXAMINATION

10 BY MR. YAMPOLSKY:

11 Q So when you -- when you gave your statement the --
12 you were asked about what clothing you're wearing; correct?

13 A Yes.

14 Q And did you tell them you're wearing a black crop
15 jacket, black pants with safety pins?

16 A Yes.

17 Q And you also told 'em that -- they asked if you had
18 any undergarments on; correct?

19 A Yes.

20 Q And you told them that you had pantyhose and --
21 pantyhose and a bra.

22 A Yes.

23 Q Okay. And --

24 MS. CRAGGS: Mace, what page?

1 BY MR. YAMPOLSKY:

2 Q -- right there, you never mention that your
3 pantyhose were ripped.

4 A They asked me what I was wearing. They didn't ask
5 me about what happened to them in between everything.

6 Q Right. I understand that.

7 A So I'm aware that they asked me what I was wearing.
8 Why am I gonna describe what I'm gonna -- what happened to
9 them?

10 Q But listen to my question.

11 A Yes, I was wearing those. I did not say my
12 pantyhose was ripped on that statement, yes.

13 MR. YAMPOLSKY: That's all I have.

14 THE COURT: Okay. Counsel, anything on that?

15 MS. CRAGGS: No, Your Honor. Thank you.

16 THE COURT: Thank you, ma'am. You may be excused.

17 State, call your next witness.

18 MS. CRAGGS: Your Honor, Rachell Ekroos is our next
19 witness.

20 MR. YAMPOLSKY: Before you call -- may I approach?

21 THE COURT: Okay. Approach, Counsel.

22 [BENCH CONFERENCE]

23 THE COURT: Just want to let doctor -- remain
24 standing.

1 MS. CRAGGS: Thank you, Judge.

2 RACHELL EKROOS,

3 [Having been called as a witness and being first duly
4 sworn testified as follows:]

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

7 THE WITNESS: Rachell, R-A-C-H-E-L-L, Ekroos,
8 E-K-R-O-O-S.

9 THE COURT: Counsel, your witness.

10 MS. CRAGGS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. CRAGGS:

13 Q Dr. Ekroos, what do you do for a living?

14 A I am a clinical forensic specialist.

15 Q And where is it that you work?

16 A I wear a few different hats. So I work at
17 Nevada Health Right, which is a clinic for populations or
18 patients affected by violence. I also am a professor at UNLV
19 School of Nursing and the School of Medicine. And I am also
20 the cofounder of the Center for Forensic Nursing Excellence
21 International.

22 Q Okay. Can you describe your education and
23 background.

24 A Sure. So I have a bachelor's degree in nursing. So

1 that's a four-year degree. And then I have a master's degree
2 also in nursing, as a family nurse practitioner. And that
3 allows me to see patients anywhere from birth -- or prior to
4 birth through death. And then I have a PhD in nursing and
5 ethnics, that's forensic nursing and ethics.

6 Q And in order to hold the positions that you do, do
7 you have to do any sort of continuing education classes
8 regarding sexual assault or sexual assault examinations?

9 A I do. I do.

10 Q Can you describe those, please.

11 A So I do ongoing classes. And that's two-fold. On
12 one hand I teach them. And so that counts towards my
13 continuing education. And I also do research. And so that
14 counts towards it, too. And then I attend national and
15 international conferences on sexual violence and other forms
16 of violence across the lifespan.

17 Q Have you given any presentations or have you been
18 published in this specific area?

19 A I have.

20 Q And can you describe that, please.

21 A Okay. So I have -- I will just say more than 80
22 presentations. I don't know the exact number. More than 80
23 presentations locally, nationally, and internationally on
24 violence or the affects of violence, either from a healthcare

1 perspective or a multi-disciplinary perspective. And what
2 that means is law enforcement, forensic science, advocacy, and
3 healthcare. And I have a handful of publications, including
4 book chapters on sexual violence and domestic violence and
5 some journal article publications.

6 Q Have you ever testified regarding sexual assault or
7 sexual assault examinations?

8 A Yes.

9 Q How many times?

10 A Oh, I don't have an exact number. I can tell you
11 it's over 100 times, total, throughout my career. It's one of
12 those where I hit three digits and didn't need to keep
13 counting.

14 Q Stopped counting?

15 A Kind of stopped counting.

16 Q Now, you perform sexual assault examinations
17 yourself. But you have also been asked to review other
18 healthcare providers examinations that they have done?

19 A Yes.

20 Q Okay. How many times have you done that?

21 A On the exams or the reviews?

22 Q The reviews.

23 A I've reviewed over 5,000 reports for sexual
24 violence.

1 Q And do you know how many exams you yourself have
2 performed?

3 A Over 1700.

4 Q Okay. Thank you. Can you educate us a little bit
5 about the anatomy of female genitalia, including the vagina,
6 kind of what parts we have so then we can discuss some
7 specifics of the case that we have before us today.

8 A Okay. So let's just start with, it's the area on
9 the female body where the pubic hair grows. So we'll start
10 from the top of the pubic hair all the way down and around to
11 the anus. So both places you go to the bathroom. And where
12 the hair is growing, we call that the labia majora. In lay
13 terms, sometimes it's referred to as the "lips" of the vagina.

14 And then if you separate where the hair is growing, there
15 is the urethra, where the female urinates from, pees from.
16 And then below that is another opening. Now, around that
17 opening to the vagina, all these little different parts we, of
18 course, have to have our medical names for. So we go over
19 that, I'll explain what that means.

20 But going around the vagina, there's tissue that we call
21 the hymen. And that's kind of like -- think about, like, the
22 collar of a shirt to the opening of the shirt. It's kind of
23 like a collar around the vagina into the opening of the
24 vagina. And then inside the vagina is what we call, like, a

1 vaginal ball. And so it's kind of like this cavity. And
2 there is a structure in there called the cervix. And when a
3 woman gets pregnant, the sperm goes through the cervix up into
4 the uterus.

5 We can palpate the uterus, like touch it, through skin,
6 but we can't actually see that when we do an exam. So those
7 structures, like the cervix and inside the vagina, we use a
8 speculum, or a device. So we look inside to put light in
9 there to see.

10 All the structures that I said around the opening, we
11 just open and we do what we call separation and traction.
12 Where we pull a little bit so that we can see all those
13 structures during an exam. And then we kind of go down and
14 there's the area between the vaginal area and the anal, or the
15 anal or the anal rectal area. That's called the perineum.

16 And then if you keep going around on the body, then you
17 come around the anus. And so the outside part's the anus.
18 And then if we look inside there, then we can see the rectum.
19 And that's a lot.

20 Q Okay. Let's talk about the vagina. Would you
21 describe that as vascular in nature?

22 A Yes.

23 Q And what does that mean?

24 A So vascular means that there's a lot of blood flow

1 to the area. And what that means for me as a clinician is
2 that when there's injury in that area, I expect it to heal
3 very quickly. That's why after women give child birth, they
4 can -- they heal very quickly depending on if they had
5 stitches or not.

6 And so if you think about the inside of your mouth, the
7 inside of your cheek, we call that a mucosa or mucosal lining.
8 And if you're eating chips or eating crackers or something
9 like that and you're chewing and maybe talking or getting
10 distracted and you bite the inside of your cheek. It hurts
11 like crazy. You know, you've hurt the inside of your cheek.
12 And I see some of you doing it.

13 And immediately the tongue goes to the cheek and you
14 feel -- and you'll feel like a little piece of skin or little
15 piece of tissue in there. And then a couple hours later, that
16 little piece of tissue's gone and you feel a little bump. And
17 then maybe that night it's still a little sore, you feel a
18 little bump, but a lot of times, by the next day, it's gone.
19 Because it's so vascular, it heals very quickly.

20 Not the part where the hair grows, but the part towards
21 the inside is the same way. It's very vascular. And it's
22 like a mucosal tissue. And the farther inside you go, the
23 more vascular it is. And so when we get injuries down there,
24 they tend to heal very quickly as well.

1 Q So I want to talk a little bit about what the
2 process is like for patients when you do a sexual assault
3 examination. Can you describe, do you give them options,
4 essentially, when they come in, when they're brought to you,
5 and then what is the process from there?

6 A Absolutely. They have options. They're patients.
7 And so they consent to each piece of the exam. And to kind of
8 summarize it, we literally start at the head and go all the
9 way to the toes. It's a head-to-toe exam, to see if there's
10 any injury, any debris, any items we need to collect. And by
11 "collect" I mean, like, use long cotton tip swabs with a
12 little bit of water. And we will take samples from different
13 areas where they say they may have had contact, depending on
14 what contact they report in their history.

15 We also take photographs. And we give medications and
16 different things like that. And then whatever that individual
17 patient needs.

18 So at that point in this exam, they can say, you know,
19 "Time out. Let's take a break," or they can say, "You know
20 what? I don't want to do that part." And sometimes, for
21 example, if they come in, we talk about collecting a kit. So
22 a sexual assault kit. So that mean's that we're gonna do that
23 exam, head to toe, make sure they're okay physically.

24 And by -- we call it bio-psycho-social. That's our

1 special word for it is, are they mentally okay? Are they
2 physically okay? Do we need to do any referrals? And in the
3 course of that, we collect samples.

4 So for example, I might collect a sample from the inside
5 of their cheek that tells -- that I package up. And that
6 tells the lab what the patient's DNA is. And let's say if a
7 patient told me that someone's mouth touched them right here
8 in the arm (indicating), then I'll take a swab, a little bit
9 of water and I'll swab there and package that up.

10 And we just go through their history on what they said
11 that happened. And it doesn't matter if it's male, female, it
12 doesn't matter if it's a little child or if it's an
13 adolescent. The process is the same. But depending on that
14 specific patient's need, we may change the process a little
15 bit.

16 Q Now, if a patient comes to you, do they have to have
17 a sexual assault examination performed? Are they given that
18 option?

19 A They're given the option.

20 Q Okay.

21 A They're given an option.

22 Q Are they given -- is there an option, to your
23 knowledge, that an examination can be performed but that,
24 potentially, the individual does not want to move forward with

1 police being involved or prosecution?

2 A Yes.

3 Q Okay. And then there's also the option that they
4 want the sex assault kit examination done and that they want
5 to move forward?

6 A Yes.

7 Q But this is all up to the patient at the time.

8 A It's up to the patient. When we do the consent
9 form -- like, for -- all consent forms are a little different,
10 depending on the program. But for our consent form, I
11 literally have different lines for them to say, yes, no,
12 maybe -- you know, even if they want to say "maybe," I write
13 maybe in there and come back and change it once they decide.

14 So they're saying, yes, I can do a physical exam. Yes, I
15 can collect samples. Yes, we can do screenings for
16 infections. Yes, we can do medications. These are all
17 different pieces of it. Also, one of the yeses is the
18 collecting samples. But another yes is, can I release this
19 package to law enforcement and can I release my medical
20 records and my report to law enforcement? And they consent to
21 each part of that.

22 Q Now, is there a difference in the exam if an
23 individual comes to you immediately after the reported sexual
24 assault as opposed to months, days, years later?

1 A Yes.

2 Q Okay. And can you describe that a little bit.

3 A So if they come immediately after and -- I'm gonna
4 clarify that. It depends on the time frame. Because
5 throughout history we've changed these time frames. So
6 currently, in Clark County, if it's been within five days, the
7 reported contact has been within five days, then that's all
8 those things I described to you. The option to the do the
9 kit, to do the exam, to do medications and screenings for
10 infection.

11 If it's beyond five days, I'm gonna -- I'm not gonna say
12 100 percent of the time -- but, typically, we don't do the
13 evidence collection because the chances of us collecting DNA
14 at that point for an investigative purpose or for the forensic
15 lab or whatever the patient and law enforcement decides,
16 that's -- the chances are much smaller because people shower,
17 change clothes, things like that.

18 And I say not all the time because sometimes there's
19 extenuating circumstances. For example, they were held
20 afterwards or they've not been able to go home and shower or
21 there's just unique circumstances that we, in that case, make
22 an exception.

23 In my career, some of those exceptions have been when,
24 like, foreign objects were used on a man or a woman, either in

1 the rectum or the vagina and they're saying it still hurts.
2 So we go ahead and do that exam because they haven't bathed,
3 they haven't done anything because it hurts.

4 Q Now, you talked about how, similar to the mouth, the
5 vagina will heal quickly. In terms of the sexual assault
6 examinations that you perform, do you often see indication of
7 trauma? Is there a percentage that you would typically see
8 some sort of finding?

9 A So depending on the age of the patient, there's
10 different research that looks at how many patients do you see?
11 How soon after the reported event has happened and the
12 percentage of injury. But if we just kind of put an umbrella
13 overall that, whether it's kids or adults, we see, normally
14 see injury, depending on the history, anywhere from maybe,
15 like, 5 percent to the highest being like 18, 19 percent of
16 patients. So it's a very low number.

17 Q Now, in preparation for today, did I request that
18 you review an examination from 1999?

19 A You did.

20 Q And was that an examination done on an individual
21 named Michelle Lehr?

22 A Yes.

23 Q Was that examination performed by a nurse named
24 Marianne Adams?

1 A Yes, according to the record.

2 Q And are you aware -- I'm sorry?

3 A I said, yes, according to the record
4 [indiscernible].

5 Q Yes, according to the record.

6 Are you aware if Ms. Adams is still practicing at this
7 point?

8 A She is not.

9 Q Okay. Did you also review -- or, I guess, tell me
10 what it is that you reviewed from that 1999 exam.

11 A So I received what appeared to be, like, a short
12 dictated report about the exam. So like a typed out report.
13 And then the pages that we typically see including with a kit.
14 And so it's all the information that's collected when you
15 collect that kit that we talked about. And along with that
16 were, I believe, four photographs.

17 Q Did you also receive photographs of the injuries of
18 the body of Michelle Lehr that were not part of, necessarily,
19 that sexual assault examination from Ms. Adams?

20 A Yes.

21 Q Okay. And did you review those as well?

22 A I did.

23 Q Okay. Based upon your independent review of
24 Ms. Adams's examination, as well as the photographs that were

1 sent to you from the examination and what she looked like on
2 that day, did you come to any conclusions about whether there
3 was injury?

4 A Yes. So based on all the photographs, there were
5 different type of injury on the patient's body.

6 MS. CRAGGS: Your Honor, if I could publish --

7 THE COURT: What exhibit?

8 MS. CRAGGS: If I would publish what's been
9 previously stipulated to as State Exhibit 11, Your Honor.

10 THE COURT: Go ahead and publish previously
11 stipulated Exhibit Number 11.

12 MS. CRAGGS: Thank you.

13 BY MS. CRAGGS:

14 Q Are these the photographs that you reviewed,
15 Dr. Ekroos?

16 A Yes.

17 Q Okay. And you talked about there were different
18 types of injuries. Does the top photograph -- well, first of
19 all, do these appear to be Polaroids?

20 A They do appear to be Polaroids. That's what we used
21 when we first started practicing.

22 Q Gotcha. Does the top photograph just appear to be a
23 photograph of the individual who was examined?

24 A Yes, it's a standard of practice to take a picture

1 of the patient. So that we can identify that's the person
2 that we saw at that time. Sometimes we may or may not have
3 identification right then [indiscernible] to us.

4 Q And just to be clear, what you're going to discuss
5 with us, in terms of the injuries that you may have seen,
6 that's you're own evaluation of the evidence, not what
7 Ms. Adams concluded in her report.

8 A Right. It's my evaluation of the notes by the nurse
9 of what the nurse saw. And then also what I'm seeing or not
10 seeing on the pictures that were provided to me.

11 Q Is it fair to say that there may be different
12 practices and procedures in 2019 that there were in 1999?

13 A Yes.

14 Q Okay. And that technology has also changed as well.

15 A Yes.

16 Q Okay. I'm going to show you what's on the bottom.
17 I'll zoom in a little bit. Can you describe what it is that
18 we're seeing here and if there is any injury, what that injury
19 may be?

20 A Okay. So to clarify, what you're actually looking
21 at, even though we said it's a Polaroid, you actually have
22 four different images on this one Polaroid picture. And
23 based on the notes of the nurse, the nurse used a tool called
24 a colposcope. And basically that allowed her to look at the

1 patient's genitalia at a more close up magnification. It
2 doesn't change anything you're looking at. And it looks like
3 they captured four of those pictures from looking at the
4 colposcope and then took a picture of that. So that's why it
5 looks kind of weird, like four pictures in one.

6 And when I started out, I used the colposcope. But with
7 change in the technology, we've moved towards, like, really
8 nice cameras and things like that, that aren't as bulky.

9 Q And Dr. Ekroos, do you see any indications of injury
10 in these four photographs?

11 A Let me see if what you're seeing is similar to mine.
12 Okay.

13 Q And I can approach with the exhibit, if that would
14 be easier for you as well.

15 A No. No. No. That's okay. So what you're looking
16 at is a close up of the female genitalia. The top two
17 pictures and the bottom right picture -- make sure it's the
18 same for you. It is. Okay. So the top two pictures and the
19 bottom right pictures are that opening around the vagina that
20 I was telling you about. So it's inside that labia area. We
21 actually call that the introitus. That's the opening there.
22 And so what the nurse is doing is trying to do separation so
23 we can see that. The top right --

24 Q Dr. Ekroos, would it be easier for you if you were

1 able to step down and point?

2 A No, I just -- I'm just making sure -- I can look at
3 the --

4 Q Okay.

5 A Does this not point for me today?

6 Q I think --

7 THE COURT: You can.

8 MS. CRAGGS: Can you do circle on that?

9 THE COURT: You probably have to turn the mouse on.
10 Flip the mouse over. Should be turning on.

11 THE WITNESS: Yes.

12 THE COURT: And then it'll give you the ability to
13 basically --

14 THE WITNESS: Oh, perfect. There we go. So that
15 will help.

16 All right. So this, right here, is the opening of the
17 vagina. And remember, we talked about that tissue that heals
18 really quickly? That's some of that tissue we're talking
19 about.

20 Now, by blowing this up a little, it's harder to see.
21 It's actually better on your screen than mine. So I'm gonna
22 outline it. See this reddened area here? Okay. So there's,
23 like, that area here that's a little redder. And it's very
24 clearly that that's redder than the rest of the tissue. So

1 that was one area I was looking at.

2 And then over here, this is a different angle. And the
3 lighting's a little different. So it's a little bit brighter,
4 but we're talking about this area here. Now, different
5 providers, particularly back in the late 90s because this was
6 a relatively new practice -- we're still working on having
7 constant terminology. So some providers were calling this
8 entire area the vagina. Okay? So that can get confusing when
9 you have someone like me that's very specific about the
10 structures.

11 But this is more referred to as the opening of the
12 vagina. And then if you look at this picture down here, you
13 see all this kind of purply blue? That's dye. That's
14 something the nurse applied. And it's called -- the fancy
15 name is toluidine blue dye. So we call TBD. So it is a dye.

16 And when you put this dye on the tissue, if there are
17 cells that have been injured, like ruptured, it'll absorb this
18 dye. And so -- like, if you looked at where you bite your
19 cheek on the inside, it's kind of hard to see -- right --
20 because all that tissue looks the same. So we apply the dye
21 so we can see a little bit better.

22 And there's little areas of where the dye is very, very
23 clear. Like, there's clear margins. And what I mean by that
24 is you can see the dye is right here, but not on the outside

1 part (indicating). You can see where that is. So that tells
2 me there's little spots there of tissue injury, like surface
3 tissue injury that absorbed the dye.

4 But then you see down here where it's a little more
5 absorbed. That's telling me that there's tissue injury there.
6 What I don't want you to do is I don't want you to look at
7 this and think that this whole thing is bruising because
8 that's the dye you're looking at.

9 Now, on the documentation, the nurse documented
10 bruising -- I forgot the exact words. Do we have the report I
11 can refer to?

12 BY MS. CRAGGS:

13 Q Would it help -- would it refresh your
14 recollection --

15 A It would --

16 Q -- if I showed you the report?

17 A Yes. Yes.

18 MS. CRAGGS: May I approach?

19 THE COURT: Go ahead. Show it to counsel.
20 Approach.

21 THE WITNESS: Which also means glasses.

22 All right. So the nurse said there is bruising from
23 about 5:00 o'clock to 7:00 o'clock in the vagina canal. Now,
24 not practicing with this nurse myself, I don't know if the

1 nurse was talking here or talking on this other picture
2 farther on the inside. So I can't -- I don't see bruising on
3 any of these pictures is where I'm going with that; okay?

4 BY MS. CRAGGS:

5 Q And you're talking about, you don't know if she was
6 talking about the bottom right or the bottom left?

7 A Right.

8 Q Just for the record.

9 A I don't know which one she was talking about. And
10 this right here, what I'm seeing here is not something I would
11 refer to, necessarily, as bruising. I would refer to it more
12 like an abrasion. You know how when you skin a knee, it takes
13 that top layer off? I would consider it more of an
14 abrasion-type injury.

15 And then if we go to the bottom right -- I mean, bottom
16 left. Sorry. This red area you see right here, that's
17 perfectly normal. That's not an injury or anything like that.
18 What happens with a female cervix, particularly when they're
19 younger like this patient was or they're an adolescent is,
20 there's an open there. We call it the os. And that's where
21 sperm goes through to go and fertilize an egg. So there has
22 to be an opening. It's also where, when a woman has a period
23 or menses, that's where the blood is discharged through that
24 little opening.

1 Well, when they're younger and they have a lot of
2 hormones and things like that, sometimes the tissue on the
3 inside comes on the outside. And you can see that. So that's
4 what that is. That's -- that right there, I'm not concerned
5 with.

6 What I can't see is below it. And so I don't know if the
7 nurse means 5:00 to 7:00 o'clock here or if it's 5:00 to
8 7:00 o'clock here. Because if it's here, I can't see that.
9 And these are the only pictures we had to review, or I had to
10 review.

11 Q So you see some injury -- was "injury" an
12 appropriate word to use?

13 A Injury'd be an appropriate word for this area right
14 here.

15 Q But you see different injury than what the nurse
16 from 1999 had noted?

17 A I do.

18 Q Okay.

19 A I do.

20 Q Now, what does that injury say to you about how it
21 occurred?

22 A Okay. So we call that -- our fancy terms are
23 "nonspecific." That it's a nonspecific injury. And that's
24 what we use in the clinical forensics to mean that something's

1 happened to the tissue there, but there are a number of
2 reasons that can cause that. So two primary reasons for what
3 I see there would be an infection with discharge that's
4 irritated that tissue to where, you know, it gets -- it just
5 gets kind of slightly raw in that area, or it can be abrasion
6 from friction from physical contact with an object, whether
7 that's part of a body or a different object. And so that's
8 why we say it's nonspecific.

9 And if you -- if you said that we see bruising, then I'd
10 say that's a specific finding. Because for us to get
11 bruising, we had what we call blunt force trauma. So I hit
12 you with something that's blunt on your arm hard enough and
13 you get a bruise. But something like this can happen a lot of
14 different ways.

15 Q Okay. So this could be from vaginal intercourse,
16 but it could not be; is that fair to say?

17 A Correct.

18 Q Okay. And so you can't tell if it, one, was from
19 vaginal intercourse or, two, if that intercourse was
20 consensual?

21 A I can't talk to consent at all because I'm not
22 present when things happen. So as a provider, I can't speak
23 to consent. But what I can speak to is can we have, after
24 sexual contact, see something like this? We do.

1 Q Okay. Now, you talked about how you don't see
2 injury in a lot of individuals that come to you. Does a lack
3 of physical findings or specific findings necessarily mean
4 that there was not a sexual assault?

5 A Right. No. And the reason why is if you look at
6 all this tissue down here, it stretches; okay? Women have
7 estrogen. And when you have estrogen, that tissue down there
8 becomes thick and the opening here of the vagina, it
9 stretches. It stretches if they use tampons, they put a
10 tampon in. It stretches during any type of sexual contact.
11 It stretches when they put a speculum in to do their annual
12 gynecology exam. It stretches when babies are born.

13 And we have some women who give vaginal birth to a baby
14 and it doesn't tear because there's so many more hormones that
15 it's more stretchy. And I know stretchy's kind of a strange
16 word to be using down there, but that's what it does.

17 So if you think about -- I've got long hair. If I put it
18 back in one of those, like, 1980s hair scrunchys -- you know
19 the ones that have the material all around 'em and so -- I'm
20 getting some "uh-huh." So if I had that scrunchy laying on
21 the table, we'd see, like, this material kind of all folded up
22 on itself; right? But then I can pull that scrunchy and open
23 it about this big. And that material kind of smooths out.
24 But at a point, it doesn't stretch any farther.

1 Down there, that opening to the vagina does the same
2 thing. And inside the vagina, the vaginal wall is like this.
3 But if we put anything in it, like a speculum, it opens up.
4 It's just tissue that relaxes on itself. So all that's kind
5 of just stretchy because of the estrogen and hormones.

6 Q And then I had mentioned -- and you had mentioned
7 some other photos that you reviewed as well that were not
8 taken by the nurse but were taken on that same day and it
9 appears when the exam was happening. And I'm just gonna
10 clarify for the jury which photos those were. This is
11 State Exhibit 2 that's been previously entered.

12 MS. CRAGGS: If I can publish, Your Honor.

13 THE COURT: Previously stipulated to or previously
14 seen, go ahead.

15 MS. CRAGGS: Thank you.

16 MR. YAMPOLSKY: Objection, Your Honor. I believe
17 the SANE -- she is qualified as an expert. However, I don't
18 believe she's qualified an expert as to what I'll call
19 "regular bruising."

20 MS. CRAGGS: Can I respond, Your Honor?

21 THE COURT: Okay. Go ahead, Counsel.

22 MS. CRAGGS: I was simply going to clarify for the
23 jury that those were the photos that we were discussing, as
24 opposed to any other photos.

1 THE COURT: That's what I thought it was, just be a
2 clarification as to when they were taken. That's all it is,
3 Counsel.

4 BY MS. CRAGGS:

5 Q So this photograph --

6 THE COURT: Objection's overruled. Go ahead.

7 MS. CRAGGS: Oh, thank you, Your Honor.

8 BY MS. CRAGGS:

9 Q And I'll just show you a couple of these. So
10 State's Exhibit 2 was one of those photos that you looked at?

11 A Yes.

12 Q Okay. And then State's Exhibit 4 was also a
13 photograph that you looked at, as well as a few others.

14 A Yes.

15 Q But primarily, you would look at the photograph that
16 we just discussed that was from inside the vagina.

17 A Actually, no.

18 Q Okay. Can you explain that.

19 A When I review a case, I review all injuries. And
20 when I perform an exam, I document, evaluate, and treat all
21 the injuries, unless they're needing emergency or urgent care.
22 So if I need to send them out for stitches or for additional,
23 more urgent, emergent care, I do.

24 But as a [indiscernible] forensic specialist, I'm

1 expected to know the mechanisms of all types of jury, whether
2 they're sharp, whether they're scraping, whether they're
3 blunt, whether they're a gunshot wound or a stab wound.

4 'Cause I have to explain to the patient what this injury means
5 and how it's gonna heal and how they have to take care of it.

6 But then on the legal side of it, I'm expected to be able
7 to explain mechanisms of injury and if they're consistent with
8 what the patient's history is.

9 Q When reviewing the report and all the photographs
10 that were sent to you, did the photographs that I just show
11 you, along with the others, do those inform your opinions
12 about this case in any way?

13 A Only to the extent that the nurse, in the paperwork
14 that I saw, had what we call a body map, which is a standard
15 of practice I would expect with any exam. And even if there
16 were no injuries, I would still expect to see the body map
17 with a note that nothing was observed. And so I was able to
18 look at those photos and coordinate with those with different
19 areas of documentation on the nurse's --

20 Q Okay.

21 A -- paperwork.

22 Q Thank you very much.

23 MS. CRAGGS: And I'll pass the witness, Your Honor.

24 THE COURT: Cross.

1 MS. CRAGGS: And if I could approach, Your Honor --

2 THE COURT: Approach. Go ahead and pull those down.

3 MR. YAMPOLSKY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. YAMPOLSKY:

6 Q Is it Ms. Ekroos? Is that how you pronounce --

7 A Dr. Ekroos.

8 Q What?

9 A Dr. Ekroos.

10 Q Dr. Ekroos. Okay.

11 You didn't write a report based on this examination;
12 correct?

13 A I didn't.

14 Q Okay. Now, you stated that just because there is no
15 findings of injury doesn't mean that there was not a sexual
16 assault; correct?

17 A No, I did not say that.

18 Q Oh, I'm sorry. What did you say?

19 A The reason I can't say that is I can't testify
20 whether or not there was a sexual assault because sexual
21 assault's a legal definition. What I can testify to is if
22 there is injury constant with the patient's history or if the
23 injury constant with the patient -- what patient said happen.

24 For example, if you told me you got hit in the arm and I

1 see a bruise and it's a certain pattern, I can see it's
2 constant with that. But then you can say, "Well, what if I
3 hit you with a mouse, would it still be constant?" It would.
4 That's that nonspecific injury. But I can't testify to sexual
5 assault itself, if that makes sense.

6 Q Yes.

7 A Okay.

8 Q And you -- just so I'm clear, if there is no
9 injuries, I mean, that would not be indicative of that any
10 kind of -- and I don't want to repeat myself --

11 A You're right.

12 Q -- if any kind of, let's say, assault or --
13 occurred; correct?

14 A Correct.

15 Q Okay. Now, you talked about the cervix being red;
16 correct?

17 A Yes.

18 Q And you said that's perfectly normal.

19 A Yes.

20 Q And one of the reasons -- there's lots of reasons
21 why it might be red; correct?

22 A Correct.

23 Q And one of the reasons, if somebody's about to have
24 their period and they're spotting would make it appear redder?

1 A It could be. It could be.

2 Q Okay. And you talk about the vagina. The vagina is
3 an internal structure; correct?

4 A The vagina is, with our current definitions and how
5 we use it clinically, is the internal structures, yes.

6 Q Okay. And the vulva would be the external
7 structure.

8 A Correct.

9 Q And if there is any sexual contact, the initial
10 contact would be with the vulva.

11 A Depends on the type of contact.

12 Q Well, if the vulva's external and the vagina is
13 internal, wouldn't the sexual contact need to touch the vulva
14 before the vagina?

15 A If you're referring to sexual -- I'm just
16 clarifying. If you're referring to sexual contact with the
17 vagina, yes.

18 Q Okay.

19 A Correct.

20 Q Now, just so I'm clear, you reviewed, obviously, the
21 four photographs that were up on the screen; correct?

22 A Yes.

23 Q And you said you reviewed other photographs.

24 A Yes.

1 Q And those photographs were not the vagina.

2 A Correct.

3 Q And you said when you examine it, you did not see
4 any bruising; correct?

5 A On those photographs, I do not see what the nurse
6 was referring to as bruising.

7 Q Okay.

8 MR. YAMPOLSKY: I have nothing further.

9 THE COURT: Any redirect on that, Counsel?

10 MS. CRAGGS: Yes, Your Honor. Just briefly.

11 THE COURT: Okay. Go ahead.

12 MS. CRAGGS: Thank you.

13 REDIRECT EXAMINATION

14 BY MS. CRAGGS:

15 Q Doctor, would you just describe -- I think I
16 neglected to ask you this -- when you're taking the DNA,
17 assuming that the patient has consented to that, can you
18 describe the process that you go through in terms of getting
19 the DNA from the patient?

20 MR. YAMPOLSKY: Objection, Your Honor. That's
21 beyond the scope.

22 THE COURT: Counsel, I can have her reopen, if we'd
23 like. But I don't think we need to introduce that. Let's go
24 ahead.

1 MR. YAMPOLSKY: I'll withdraw my objection.

2 THE COURT: Go ahead.

3 THE WITNESS: Okay. So first -- may I clarify one
4 thing first?

5 BY MS. CRAGGS:

6 Q Yes.

7 A Okay. I don't know if there'll be DNA on the swabs
8 that I collect. Okay? And so sometimes when we say we're
9 collecting evidence or collecting DNA, that may be a little
10 bit confusing because we're not the investigators, we're
11 providers.

12 So based on the history that a patient gives me, if they
13 say there was oral contact -- so mouth to their neck
14 contact -- then I take -- think about a Q-tip that you use for
15 your ear, but just think about the handle on it being twice
16 that long. I wet it and I swab that area and I package that
17 up. And I do that throughout the body.

18 If I have a patient that can't remember what happened,
19 then there's a standard of just all these different swabs that
20 I'll collect. But I collect 'em, we dry 'em, package them up,
21 seal them up, lock it up, and if the patient's consented,
22 release that to law enforcement.

23 Q This may seem like a silly question, but how would
24 you go about getting a vaginal swab?

1 A Okay. So a vaginal swab, there's two ways. I guess
2 there's a lot of ways, but there is primarily two ways that we
3 do that. If I have a patient that has a lot of injury, a lot
4 of pain, something like that, I may just do the inspection,
5 like look at it the best I can. But they may say, you know,
6 "I don't want the speculum. It's gonna hurt. I don't want to
7 do that."

8 And so in that case, I take two swabs and I insert 'em
9 into the vaginal opening, but at an angle. Because down here,
10 underneath what we call -- our fancy word is posterior fornix.
11 And what that means is, remember we have the cervix in the
12 vagina. So we've got four spaces: The space above, the space
13 below, and each side. In the medical world, we call those
14 fornixes.

15 So I slip the two swabs in and I can feel the cervix. So
16 I know I want to go below that because that's where fluids
17 will pool. And so we collect a sample from there. So that's
18 one way.

19 If it's a patient where I'm able to do a full speculum
20 exam, then I put the speculum in. And it has a light on it.
21 And we open it up. That allows us to see. I still collect
22 those same two swabs from that same area, but then I also
23 collect two swabs -- remember that opening where it was red on
24 that picture? I collect two swabs from there, too. Because

1 when there's nothing in there, the cervix, that opening --
2 let's say this is the opening where my ring is, the cervix is
3 kind of like that (indicating). So it's kind of pointed down
4 into where the fluids pool. And that's just how our bodies
5 are made because that's how it facilitates reproduction.

6 Q Okay. Can you tell, based on your review of this
7 particular case, if a vaginal swab was taken from the victim?

8 A Yes.

9 Q And can you tell which method was used?

10 A Can I look at the reporter again --

11 Q Yes.

12 A -- just to confirm?

13 Okay.

14 Q Think I might have it here somewhere.

15 MS. CRAGGS: May I approach, Your Honor?

16 THE COURT: Go ahead.

17 MS. CRAGGS: Thank you.

18 THE WITNESS: Thank you.

19 Okay. So there's two reasons that I can conclude that
20 the speculum was used. One is on the report is a picture of
21 looking at the cervix with a speculum and it's not marked out.
22 So we crop through that if we don't do that. So that's one
23 standard.

24 And then the other way that I know is that we have

1 pictures of the cervix. And we wouldn't be able to see the
2 cervix like we did if the speculum wasn't used. So the
3 speculum is in there and it's opened and the cervix is right
4 here and then we take a picture through the speculum.

5 And so that's that picture with the reddened area around
6 the cervix that you saw. And then regarding the swabs, there
7 is a list on here that the nurse marks on what swabs they
8 collected.

9 BY MS. CRAGGS:

10 Q Now, regarding the two different methods that you
11 discussed, would you describe the second method as a more
12 invasive type of procedure?

13 A Physically invasive, yes. I'm very careful with
14 that word because everyone has their own meaning of what
15 invasive would be to them individually. But from a medical
16 perspective of inserting something into the body as opposed to
17 looking, it's more invasive.

18 Q And how is the patient positioned in order for the
19 speculum to be inserted into the body?

20 A So traditionally, we call it the lithotomy position.
21 And so think of an exam table that any of you may see in a
22 medical office. But what's inside the table that you can't
23 see are what we lovely -- we refer to as stirrups. But we
24 pull those out and we unfold them. And whether that's on a

1 gurney, like in the hospital, or exam table, we can do the
2 same thing. And the patient puts a heel in each one.

3 And then, normally, the knees go like this (indicating)
4 so we have to open the knees up and we reposition, try to get
5 'em as comfortable as possible. And we have them scoot their
6 bottom all the way down to the edge of the table. So the
7 knees are kind of up -- they're kind of bent; okay? So
8 they're kind of like this (indicating). And then legs are
9 spread and then we have lights that we can use.

10 And then we look at everything first. We collect some of
11 those samples from the outside. And then we do what --
12 remember I told you, we kind of open up and look and we look
13 at everything there. We may collect there, depending on what
14 we're seeing. And then we insert the speculum to look on the
15 inside.

16 Q Thank you.

17 And then, finally, so it's fair to say -- is it fair to
18 say that you can't -- well, you can't conclude how the
19 injuries happened. You can conclude whether they are
20 consistent with what the patient has said.

21 A Correct.

22 Q In this case, and upon your review, do you believe
23 that the injuries that you saw were consistent with what the
24 patient had said to the original nurse?

1 A Yes, I mean, considering that we can have contact
2 and we know scientifically we can have contact without injury,
3 then it would -- even with no injury, it would still be
4 consistent. It's not -- we almost say, it's not inconsistent,
5 if that makes sense.

6 MS. CRAGGS: Thank you, Your Honor. Pass the
7 witness.

8 THE COURT: Any cross on that, Counsel?

9 MR. YAMPOLSKY: Thank you, Your Honor.

10 RE CROSS-EXAMINATION

11 BY MR. YAMPOLSKY:

12 Q And you previously referred to the injuries as
13 nonspecific injuries.

14 A Correct.

15 Q So you don't know the exact mechanism of injury.

16 A Do not.

17 MR. YAMPOLSKY: Thank you. Nothing further.

18 THE COURT: Anything on that, Counsel?

19 MS. CRAGGS: No, Your Honor. Thank you.

20 THE COURT: Doctor, thank you. You may be excused.
21 Counsel, approach.

22 THE WITNESS: The papers still here, before I leave.

23 THE COURT: You can just leave 'em there.

24 [BENCH CONFERENCE]

1 THE COURT: Ladies and gentlemen, I know that for
2 you guys the day -- at least in my courtroom -- started not
3 too long ago. But for some of us, it started when the sun
4 came up this morning. It's a beautiful thing, if you haven't
5 seen the sunrise in Las Vegas. Usually this time of year it
6 is about 5:36, 5:40. Beautiful time.

7 But we're gonna take a lunch break at this time. We're
8 gonna break until -- and let's make sure everybody's on the
9 same page. We're gonna break until 1:30. 1:30. Okay? That
10 means I need you back here before 1:30; okay?

11 So during this recess you're admonished not to talk or
12 converse among yourselves or with anyone else on any subject
13 connected to this trial or read, watch, or listen to any
14 report of or commentary on the trial or any person connected
15 with this trial by any medium of information, including
16 without limitation: Newspapers, television, radio, or
17 Internet, or form or express any opinion on any subject
18 connected with this trial until the case is finally submitted
19 to you.

20 You're not to do any experiments or investigation
21 regarding any matters raised in this trial, nor are you to
22 post on any social media forums about the trial or attempt to
23 investigate anything you've heard in this trial on any form of
24 social media or the Internet.

1 We will see you back here at 1:30.

2 THE MARSHAL: All rise for the jury.

3 [OUTSIDE THE PRESENCE OF THE JURY]

4 THE COURT: All right. Counsel, just for my
5 edification, at 1:30 we have who being called?

6 MR. SCHWARTZ: Your Honor, right now, we're planning
7 on calling Ms. Perez.

8 THE COURT: Okay.

9 MR. SCHWARTZ: Candy.

10 THE COURT: Okay. And then who's next?

11 MR. SCHWARTZ: Our DNA analyst.

12 THE COURT: Okay.

13 MR. YAMPOLSKY: Are you calling Hnatuick?

14 MR. SCHWARTZ: And then probably not calling
15 Hnatuick.

16 THE COURT: Okay. So at least we know Perez --

17 MR. SCHWARTZ: We're planning on calling the other
18 detective --

19 MS. CRAGGS: The cold case detective.

20 MR. SCHWARTZ: Cody.

21 THE COURT: Cold case -- okay.

22 MR. SCHWARTZ: Detective Cody.

23 And then there's a Defense witness that, depending on the
24 timing, we might have to go out of order.

1 THE COURT: Okay.

2 MR. SCHWARTZ: But we're tentatively -- and I'll
3 talk with Ms. Craggs -- we're ending with Cody as our last
4 witness and then we're resting.

5 THE COURT: Okay. Okay. Perfect. Just want to get
6 an idea of the schedule.

7 MS. CRAGGS: Thank you.

8 THE COURT: Okay. We'll see you guys back here at
9 1:30.

10 [RECESS AT 12:29 P.M.; PROCEEDINGS RESUMED AT
11 1:33 P.M.]

12 [OUTSIDE THE PRESENCE OF THE JURY]

13 THE COURT: Good afternoon, everyone. Please be
14 seated.

15 Counsel, anything that needs to come before the bench
16 before we get started?

17 MR. SCHWARTZ: I think so, Your Honor. Just in
18 discussing with Defense counsel, we -- I guess we would need
19 an evidentiary ruling from you on an issue. I -- the next
20 witness is Ms. Perez, Candy. She, in speaking to her, she
21 told me that the victim disclosed to her about the sexual
22 assault that she's initially kind of skeptical about it
23 because -- one reason because she felt like the victim would
24 go out with a lot of guys or, like, was kind of promiscuous,

1 so to speak.

2 THE COURT: Okay.

3 MR. SCHWARTZ: I bring it up because I don't think
4 -- I wasn't even gonna touch that whole subject of questioning
5 because I don't think it's permissible. At least the part
6 about the victim's prior sexual promiscuity. I think it's
7 prohibited under the Rape Shield Law. I have the statute
8 here.

9 THE COURT: I'm aware of the statute because it
10 came -- it was gonna come up in another matter. But we're
11 talking about whether or not she's had sexual intercoursess
12 with other individuals as to whether or not that's gonna be a
13 Rape Shield issue or that she may have been, basically, during
14 this time period, a promiscuous woman, according to Ms. Candy?

15 MR. SCHWARTZ: Right. The latter.

16 THE COURT: Okay. Counsel?

17 MR. MARGOLIS: When Bryan told me about this,
18 obviously, I'm very curious to hear about Candy's skepticism.
19 And now that I know that the cause of Candy's skepticism was
20 her perception of this woman, that she spent a lot of time
21 with being promiscuous, I fell like I'd obviously want to ask
22 questions about it. If not just for the way that Candy
23 responded to the disclosure initially. It had an impact on
24 her state of mind on what she perceived the urgency of the

1 matter to be.

2 THE COURT: Okay. So you're basically saying that
3 we're gonna be able to have a girlfriend come in and talk
4 about her friend's sexual appetites based upon what? Talk
5 over coffee or she's actual eye witness to her involving
6 herself in sexual activities?

7 MR. MARGOLIS: I think she's probably a percipient
8 witness to some of the acts of promiscuity that she felt
9 affected her receiving the disclosure, I feel like.

10 THE COURT: So coming in and saying the fact that a
11 victim had sex with someone not her husband previously allows
12 that witness to say that she's what? Promiscuous?

13 MR. MARGOLIS: I'm not -- I'm talking about the
14 affect on Candy of the disclosure.

15 THE COURT: Okay. So you can't ask that, "Were
16 you" -- "Did you believe that you needed to rush her to
17 emergency room?"

18 "No."

19 "Why is that?"

20 And then you want her to say, "Because I thought that" --
21 you know, "I thought that she was a little bit loose." "She
22 was -- she slept around," something like that? That's your
23 issue [indiscernible]. But to sit there and go, "Okay. How
24 many people was it" -- you can't get into that --

1 MR. MARGOLIS: No, I --

2 THE COURT: -- that's what Rape Shield's all about.

3 MR. MARGOLIS: I wouldn't get into all of that.

4 MS. CRAGGS: And, Your Honor, our position, you
5 can't -- I mean, you can't get into any of that. I mean,
6 that's what the statute prohibits is talking about any sexual
7 conduct --

8 THE COURT: The statute does not prohibit if, in
9 fact, Candy believes that this woman, the victim in this case
10 was flirting with him -- something she perceived on that or in
11 that day, that night, whatever you want to call it -- now
12 we're basically calling it the early morning. If during that
13 time period the victim said, "Hey, I'm looking to score
14 tonight. I'm looking to get," whatever you want to call it.
15 That's not what Rape Shield's about.

16 MS. CRAGGS: I understand that.

17 THE COURT: To say that the week before that she
18 went and danced with four other people and had sex with them,
19 Counsel, that's what Rape Shield's all about. You're not
20 gonna be able to discolor a victim by a "friend" coming in and
21 saying, "In my opinion, she's promiscuous." You can't do
22 that.

23 What you can do is what she can say, that night she's --
24 I mean, if she comes in and says, "The reason why I didn't

1 think much about what she said about the Defendant is 'cause
2 that night she told me and told all of us, 'Tonight, I'm
3 getting laid. I'm gonna have sex with someone. That's what
4 we're going out to do.'" That's absolutely allowed in.

5 'Cause that goes to, quote, all their state of minds. But it
6 clearly goes to whether or not this individual had consensual
7 sex that night.

8 But to have her come in and say, "Oh, yeah. This was
9 a -- we did this every weekend and every weekend I know she
10 scored." No. That's Rape Shield Law. That's exactly what
11 the law is not allowing you to do.

12 But if she's gonna come in and say -- and he can ask that
13 question, "Did you feel an urgency to report this to the
14 police?"

15 "No."

16 "Why not?"

17 And she says, "Because, hey, that night she told us and
18 we all knew and fact is Joanne went home with the bartender
19 and I called up my boyfriend. We all thought this night we
20 were gonna have consensual sex." She can say that all she
21 wants. That's her initial perception of what happened at the
22 scene.

23 MR. SCHWARTZ: My concern is asking that question
24 that you just said he could ask, Your Honor, is gonna elicit

1 the testimony that we're talking about, that she was --

2 THE COURT: Well, let's take her outside the
3 presence of the jury and ask her what her response is gonna be
4 in regards to that area. That way we can clear up whether or
5 not we don't want to, quote, "Open the door" and/or "ring the
6 bell." But he's allowed to -- I mean, if she's basically
7 gonna come in and say, "Yeah, the reason when she came back I
8 didn't jump to it and say, 'We need to report it,' is she told
9 me that night she was going to sleep with someone."

10 MR. SCHWARTZ: And I understand that.

11 THE COURT: She can say --

12 MR. SCHWARTZ: I agree.

13 THE COURT: -- that. That's not what --

14 MR. SCHWARTZ: She's gonna say she doesn't remember
15 her even talking to Ramon that night. So I don't think it's
16 gonna be an issue in the since that we're thinking it would
17 be, but we could talk to her outside the jury --

18 THE COURT: Well, here's how we do that: We bring
19 her in right now --

20 MR. SCHWARTZ: Sure.

21 THE COURT: -- we do a quick voir dire in regards to
22 that area so that we don't cause a mistrial. And we basically
23 ask her, you know, those questions. And, Counsel, it's gonna
24 be that kind of questions. You are -- yes, you are allowed to

1 ask her about what you guys perceive as, hey, there was no
2 rush in her opinion. She didn't call 9-1-1 from her
3 apartment. But I would imagine, if I understand the
4 testimony, her friends being -- one of 'em being Candy, said,
5 Don't shower. Don't do anything. We should take you over to
6 the hospital or to the police.

7 Okay. If that's different than what she said previously
8 in discovery, then we'll know about it. But if she says,
9 "Hey, I just think" -- you know, "I thought of my friend as
10 being a loose individual," no. Counsel, that's rape law.
11 That's exactly what we -- the legislature wanted to protect,
12 was someone's reputation from basically a friend's opinion.

13 It may be that she's just jealous of her. It could be
14 that they're both that way. Could be that the other
15 individual -- although from this evening it sounds like she
16 went with someone else. So we're not gonna get into her
17 personal appetites either.

18 MR. MARGOLIS: Yeah, it just feels like that's gonna
19 be a fine line to walk.

20 THE COURT: That's every single time in rape cases.
21 It's a fine line. That's why that rape statute's out there.

22 MS. CRAGGS: She's --

23 THE COURT: Let's bring in -- who is she?

24 MS. CRAGGS: She --

1 MR. SCHWARTZ: Maria Perez.

2 THE COURT: Maria Perez. Okay.

3 MR. SCHWARTZ: Candy.

4 MR. YAMPOLSKY: And, Your Honor, I have one more
5 thing that, after her, I want to put on the record.

6 THE COURT: Okay. Quickly. We've got a jury out
7 there.

8 MR. YAMPOLSKY: Yeah, quickly. You want me to do it
9 now?

10 THE COURT: No, because I think she's gonna be
11 walking through and I don't want to have her hear something
12 she shouldn't.

13 MARIA PEREZ,
14 [Having been called as a witness and being first duly
15 sworn testified as follows:]

16 THE CLERK: Please be seated. State and spell your
17 first and last name for the record.

18 THE WITNESS: My name is Maria Perez.

19 THE COURT: Go ahead and spell that last name,
20 ma'am, for the record.

21 THE WITNESS: P-E-R-E-Z.

22 THE COURT: Good afternoon, Ms. Perez. I'm
23 Judge David Jones. I'm gonna ask you a few questions and I
24 know counsel will have a few questions for you.

1 Before we get the jury in, you have been summoned here to
2 basically ask some -- answer some questions about a particular
3 night. And we all understand it's been a long time.

4 THE WITNESS: Yes.

5 THE COURT: Okay. Some of the questions that might
6 come in, in this case and direct towards you, would be about
7 perceptions you may have had in regards to the victim in this
8 case; okay? And things that you may have known about her
9 before this night and, of course, things about that night;
10 okay?

11 THE WITNESS: Yes.

12 THE COURT: Okay. When asked questions in regards
13 to when she came to your apartment that morning of, around --
14 we've been talking somewhere around between, let's say,
15 between 8:00 a.m. and noon; okay? And she informs you that
16 she believes that she had been assaulted, sexual assault had
17 been committed on her. At that time -- okay -- just when you
18 were told that, did you have any perceptions in your mind or
19 beliefs in your mind as to, you know, what you believed about
20 what she said?

21 Did you basically say, "Well, this is her and she has a
22 tendency to exaggerate," or what your state of mind, what your
23 understanding of what she was saying to you and how you
24 reacted. Okay? Do you have a recollection of that morning?

1 THE WITNESS: Yes.

2 THE COURT: Okay. When she came into your -- back
3 into your apartment that morning, did she express to you that
4 she believed she was sexually assaulted?

5 THE WITNESS: Yes.

6 THE COURT: Okay. As a result of hearing that from
7 her, when you heard that from her, what reactions did you have
8 mentally? What did you think about that statement to you?

9 THE WITNESS: I was kind of in disbelief.

10 THE COURT: Okay. And why was it you were in
11 disbelief?

12 THE WITNESS: Because we had, like, kind of crazy
13 night.

14 THE COURT: Okay. Crazy nights before that one or
15 this one?

16 THE WITNESS: Before that.

17 THE COURT: Okay. And those crazy nights before,
18 those involve, to your understanding, relationships with men?

19 THE WITNESS: Yes.

20 THE COURT: Okay. Did you actually witness this
21 individual having consensual sex with men? Were you part of
22 that, where you actually witnessed those acts being committed
23 or just that you go to a bar, she would go away with someone
24 and then you guys would talk about it the next day?

1 So there's a difference between actually seeing
2 something, being told about it the next day or the day after
3 or even weeks after. So what perceptions do you have on it?

4 THE WITNESS: I seen it.

5 THE COURT: Okay. So you saw her actually involving
6 that?

7 THE WITNESS: Yes.

8 THE COURT: Okay. And so because of your
9 understanding of at least what you saw of her and the crazy
10 nights that you had had with her, during that time period,
11 when she said this to you, that caused in your mind, at
12 least -- okay -- a disbelief or a -- kind of you're
13 questioning about what she was saying?

14 THE WITNESS: Yes.

15 THE COURT: And that was based solely upon the
16 past --

17 THE WITNESS: Yes.

18 THE COURT: -- what you had seen her done?

19 Okay. What about that night? Were there anything about
20 that -- going to that night, the early morning when you guys
21 were out at the Silver Saddle, during that night and that
22 early morning, just that, was there things about the way she
23 was acting that night that added to your disbelief saying,
24 "Well, just another crazy night and it's just like all the

1 rest of 'em." But is there any particular, in that night,
2 early morning, that comes to mind?

3 THE WITNESS: No.

4 THE COURT: Okay. So were there anything -- did you
5 observe any actions of her that night, early morning in
6 regards to the Defendant?

7 THE WITNESS: I don't recall.

8 THE COURT: Okay. So you didn't see her engage in
9 any kind of consensual relationship with her at the bar, so to
10 speak? Touching hands? Kissing?

11 THE WITNESS: No.

12 THE COURT: Hugging?

13 Okay. At that time period, that early morning we're
14 talking about, after midnight --

15 THE WITNESS: Yes.

16 THE COURT: -- early morning, while you guys are
17 still at Silver Saddle, was there anything about the way she
18 was handling herself? Was she intoxicated? Inebriated?
19 Under any type of drugs that you could tell that, in your
20 opinion, was kind of clouding her judgment or preventing her
21 from doing what you considered normal?

22 THE WITNESS: No.

23 THE COURT: Okay. So was there anything about that
24 early morning that added to your disbelief? So you knew about

1 the crazy nights before, but about just that night and that
2 early morning, about the way she was acting, the way she was
3 handling herself -- whether she was drinking or intoxicated or
4 under any type of drugs -- was there anything about that that
5 added to your previous kind of "crazy night" belief about her?

6 THE WITNESS: No.

7 THE COURT: Okay. Counsel for the State, questions?

8 MR. SCHWARTZ: Your Honor, I don't have any
9 additional questions to those.

10 THE COURT: Counselor for the Defendant?

11 MR. MARGOLIS: I have a couple questions Your Honor.

12 THE COURT: Okay.

13 VOIR DIRE EXAMINATION

14 BY MR. MARGOLIS:

15 Q Ms. Perez, you talked about these crazy nights that
16 you had with Michelle Lehr. Do you recall about when they
17 were? Because the incident we're talking about was
18 April 24th, 1999. When were these crazy nights taking place,
19 if you could put it in context to that time?

20 A It was before that.

21 Q Weeks? Months?

22 A Weeks.

23 Q Okay. So you had gone out with Ms. Lehr and enjoyed
24 these crazy nights in the two years between April 24th, 1997,

1 let's say, and April 24th, 1999?

2 And about how many crazy nights would you say in that
3 two-year period? And I'm using that period 'cause I guess the
4 two-year-old son was at your place during this evening; right?

5 A Yes.

6 Q About how many crazy nights in that two-year period?

7 A I don't recall, but it was many.

8 Q More than ten?

9 A Yeah. Yes.

10 Q Okay.

11 MR. YAMPOLSKY: More than 20?

12 BY MR. MARGOLIS:

13 Q More than 20?

14 A No.

15 Q Somewhere between 10 and 20 over a couple years?

16 A I'd say about ten.

17 Q All right. And Ms. Lehr stayed with you for a
18 period; right?

19 A Yes.

20 Q You remember about how long that period of time was?

21 A Maybe two months.

22 Q Two months?

23 A Yes.

24 Q Okay. And I'm assuming some of those crazy nights

1 fell in that two-month period.

2 A Yes.

3 Q Okay. And that's how you had occasion to actually
4 perceive her with men.

5 A Yes.

6 MR. MARGOLIS: That's it.

7 THE COURT: Okay. Counsel?

8 MR. SCHWARTZ: Nothing further.

9 THE COURT: Okay. Ma'am, we'll go ahead and excuse
10 you. We're gonna have you call -- come right back in. So if
11 you'll just stay -- Marshal will take you to one of these
12 anterior rooms. We'll have you stay in there.

13 THE WITNESS: Okay.

14 THE COURT: Okay?

15 All right. Counsel, for the record, your motion, based
16 upon that testimony.

17 MR. SCHWARTZ: Your Honor, my motion is to limit her
18 testimony to just what she remembers that evening into the
19 next morning, not anything about the past, going out, partying
20 with other guys. Anything about that should all be stricken,
21 or should all be limited, not allowed into evidence.

22 THE COURT: Counsel?

23 MR. MARGOLIS: Your Honor, Michelle Lehr got on that
24 stand and, like a mantra, repeated the fact that she had not

1 been out for two years.

2 THE COURT: Okay.

3 MR. MARGOLIS: Like a mantra. This woman directly
4 contradicts that testimony. So I believe I should be able to
5 get into it for impeachment purposes and to attack the
6 victim's credibility.

7 THE COURT: This is what you're gonna be able to be
8 allowed to do: Basically, her entire testimony was, based
9 upon previous nights and/or these crazy nights, not including
10 this night and morning in question. She specifically asked --
11 was asked that. She specifically said, "No, this night didn't
12 add to it. She wasn't doing anything crazy this night, early
13 morning that added to my disbelief."

14 But it clearly shows, at least, and the difference of
15 opinion from the victim saying, "Since the birth of my son
16 until this night, I didn't go out and party. I didn't go out
17 and drink. I didn't go out and have these girl's night out."

18 Counsel, I am going to allow you to ask questions of this
19 witness, "Previous to this time period, previous to this night
20 in question, did you ever go out and party or however you want
21 to define it, with Ms. Lehr in the previous two years?"

22 That's it.

23 We're not gonna get into whether or not she thought she
24 was sexually permissive (sic), whether or not she was crazy,

1 loose, or whatever you want to define it. Because that's what
2 the Rape Shield is all about. You're trying to discolor the
3 victim by saying, previous to this night, she was this type of
4 character. It doesn't matter, according to the law.

5 MR. MARGOLIS: All right.

6 THE COURT: You can have -- I think somebody asked
7 in voir dire if you have a prostitute who is a known
8 prostitute who admits she's a prostitute and the night in
9 question she told a gentleman, no, is it still rape? Yes.
10 Can you bring up the fact that she was a prostitute? No.
11 That's what the rape shield is all about. You cannot tarnish
12 the victim by trying to bring up her past and sexual
13 relations.

14 But you can, and I will allow you on this witness, to ask
15 her in the two years previous to this episode, did you go out
16 on similar types of nights with this -- Ms. Lehr where you
17 went out and partied, were out -- you guys went out dancing,
18 where you went out to clubs? Because her statement was she
19 didn't go club hopping and everything else. This woman
20 disputes that. Okay?

21 You're gonna be able to ask that question. And that's
22 where it's gonna stop. Do not ask, because it will be a
23 mistrial, Counsel --

24 MR. MARGOLIS: I won't.