

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

2                                   \_\_\_\_\_

3   GUSTAVO GUNERA-PASTRANA,   )   No. 79861

4                                   Appellant,   )

5                                   v.   )

6                                   THE STATE OF NEVADA,   )

7                                   Respondent.   )

Electronically Filed  
May 19 2020 11:14 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8                                   \_\_\_\_\_)

9                                   **APPELLANT'S APPENDIX VOLUME VII PAGES 1455-1704**

10

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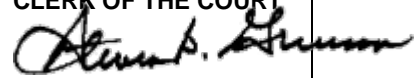
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1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 GUSTAVO ADONAY GUNERA-  
12 PASTRANA,  
13 Defendant.

)  
) CASE#: C-16-318461-1  
)  
) DEPT. XXVIII  
)  
)  
)  
)  
)

14 BEFORE THE HONORABLE RONALD J. ISRAEL  
15 DISTRICT COURT JUDGE  
16 MONDAY, JUNE 10, 2019

17  
18 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

19 APPEARANCES:

20 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.  
MICHELLE SUDANO, ESQ.

21 For the Defendant:

22 KEVIN SPEED, ESQ.  
23 TEGAN MACHNICH, ESQ.

24  
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Monday, June 10, 2019

2

3 [Case called at 11:04 a.m.]

4 [Outside the presence of the prospective jurors]

5 THE COURT: All right. C-318461, State v. Gunera-Pastrana.

6 Counsel is present. Defendant is present. We're outside the  
7 presence.

8 Steve, who is it who brought their kids?

9 THE MARSHAL: Prospective juror number 10 Glass --  
10 Timothy Glass.

11 MS. DIGIACOMO: He's badge number 272, just for the  
12 record.

13 THE COURT: Yes, Mr. Glass brought all four of his children  
14 and wants to speak with me. I am sure it is regarding he doesn't want to  
15 be here. There's nothing we can do with four kids. He's off.

16 MS. MACHNICH: Your Honor, how do you want to handle  
17 his replacement? Are we using an alternate or are we bumping  
18 someone from the dismissed up into an alternate spot?

19 THE COURT: We'll use the alternates.

20 MS. MACHNICH: Okay.

21 THE COURT: Bump someone from the dismissed -- you  
22 mean start all over?

23 MS. MACHNICH: No.

24 MR. SPEED: No.

25 MS. MACHNICH: We haven't sworn a jury yet.

1 THE COURT: Correct.

2 MS. MACHNICH: So technically we have the two remaining  
3 people who have been passed for cause and cleared. The next person  
4 on the list would be Lesane, number 206, but if we're using an  
5 alternate --

6 THE COURT: He'll be the last -- yes, he'll be the last -- the  
7 third alternate.

8 MS. MACHNICH: Okay.

9 THE CLERK: Oh, he will be?

10 MS. MACHNICH: So we'll bump everyone up.

11 THE COURT: So bump, yes. Everybody -- so who is our first  
12 alternate?

13 MS. MACHNICH: Originally, it was Worthy, 208.

14 THE COURT: Worthy, so Worthy will in there.

15 THE CLERK: So Worthy will be Juror -- oh, she puts them  
16 down here. They're supposed to be secret. She's not supposed to list  
17 them.

18 THE COURT: It doesn't --

19 THE CLERK: Oh, okay.

20 THE COURT: -- it's the last --

21 THE CLERK: Yeah, she'll be Number 12 then.

22 THE COURT: When do you want me to tell them this case is  
23 going to go past next Friday?

24 MS. DIGIACOMO: Well, Your Honor, are we going to be dark  
25 on Wednesday? You had mentioned may be getting somebody to do

1 your criminal calendar.

2 THE COURT: That was, I believe, for Monday, today. I don't  
3 think it'll -- when you say --

4 MS. DIGIACOMO: Well, if you recall --

5 THE COURT: -- did I have --

6 MS. DIGIACOMO: -- you weren't going to be able to start  
7 until 1:00 on Friday because your criminal calendar was pretty big.

8 THE COURT: Right.

9 MS. DIGIACOMO: I have to be at the Supreme Court from  
10 1:30 to about -- I could get back here by 3 -- like 2:45 to 3, so we would  
11 only be able to go 3 to 5 on Wednesday. So I didn't know if you just  
12 wanted to be dark on that day, or --

13 THE COURT: Yeah. I think that's how it's going to have to  
14 be. I think there's -- since Thursday of last week there hasn't been any  
15 doubt in my mind it's going past next Friday, but boy, if I tell them --

16 MS. DIGIACOMO: And Your Honor, even if we slid in and got  
17 this done by Friday, deliberations could go into next week.

18 THE COURT: Well, absolutely. And I think even they realize  
19 that, but I don't think we'll be done with closing by Friday.

20 MS. DIGIACOMO: If this Court was going to tell them, I  
21 would think that the opportunity before they're sworn is the time to tell  
22 them. So we can know if there's an issue.

23 THE COURT: Assuming maybe I could get somebody, you  
24 have -- your argument is what? 1:30?

25 MS. DIGIACOMO: It's from 2 to 2:30, so I need to walk over

1 at 1:30 and I could be back here around 2:45 to 3, because it's not in this  
2 building anymore so I can't just run upstairs.

3 THE COURT: How much is on Wednesday? And then --

4 THE CLERK: It's kind of a pretty good calendar. We have 12  
5 sentencings --

6 THE COURT: All right. I'll --

7 THE CLERK: -- 4 revos.

8 THE COURT: -- ask Sandy to see if she can find somebody  
9 who can do it. Then we could from 8:30 until straight through until, say,  
10 1:30 --

11 MS. MACHNICH: Take a lunch while you're gone.

12 THE COURT: -- without lunch.

13 MS. DIGIACOMO: Right.

14 MR. SPEED: That makes sense.

15 THE COURT: No, I'm not going to bring them back. That's --

16 MS. MACHNICH: We can always do jury instructions if we're  
17 far enough.

18 THE COURT: All right. I'll see what we can do.

19 MS. DIGIACOMO: Okay.

20 [Pause]

21 THE COURT: All right. You know, we'll see what happens.

22 We have a big calendar and there's only, you know -- everybody who  
23 has a Wednesday is not going to be able to do it, so we'll see. She'll tell  
24 me.

25 Okay. What else? Nothing?

1 MS. DIGIACOMO: Nothing by the State.

2 MR. SPEED: Court's indulgence, Your Honor.

3 THE COURT: I don't hear crickets.

4 MR. SPEED: Your Honor, we have a bit of an issue that we  
5 need to speak with the Court about outside the District Attorney's  
6 presence. It involves a number of reactions or, I guess, conditions  
7 subsequent to the Court's ruling before we open.

8 THE COURT: Okay. You want to do that now?

9 MR. SPEED: I think this is the best time now that we've got  
10 the jury outside. This shouldn't take more than ten minutes, Your Honor.

11 THE COURT: All right. Go ahead.

12 All right. So it was Timothy Glass? All right. You can tell  
13 him we excused him, Steve.

14 THE MARSHAL: Yes, Judge.

15 THE COURT: Thank you.

16 All right. Go ahead.

17 MR. SPEED: Your Honor, we --

18 THE COURT: We're outside the presence of the State.

19 MR. SPEED: For the record, Kevin --

20 [Record sealed from 11:12 a.m. to 11:16 a.m.]

21 THE COURT: And I was thinking over the weekend should  
22 the Defense seek to impeach, as we've discussed, again, ad nauseum,  
23 regarding the U visa, and the witness discussed the two reasons she  
24 claimed she applied. We will need a limiting instruction regarding the  
25 use of the alleged domestic violence.

1 MR. SPEED: The other bases for Ms. Casillas Ortiz's  
2 application, understood.

3 MS. DIGIACOMO: And, Your Honor, if I may approach?

4 THE COURT: Did you already think about that?

5 MS. DIGIACOMO: Of course. There you go.

6 THE COURT: Of course. Well --

7 MS. DIGIACOMO: Of course. That's the one for you to read  
8 simultaneously with the --

9 MR. SPEED: May I approach, sir?

10 THE COURT: Yes. It's the one I've seen before and it doesn't  
11 discuss it specifically.

12 Okay. So anything else? I don't think --

13 MR. SPEED: I think that is all from the Defense, Your Honor.

14 THE COURT: -- unless you want to work through the normal  
15 lunch hour, I've got to read to this stuff, which, you know, I mean, with  
16 my voice it's going to take 15 minutes. We've got to swear them in, blah,  
17 blah. That's going to take us almost up until the noon. I mean, do you  
18 want to power through with openings and then let them go after that?

19 MS. DIGIACOMO: Well, Your Honor, the State's opening is  
20 not very long, but I have a witness -- the first witness for 1:00 coming to  
21 my office at noon. So I do need to meet with the witness before  
22 testimony.

23 THE COURT: All right. So anything else?

24 MS. DIGIACOMO: No, Your Honor.

25 MS. MACHNICH: No.

1 THE COURT: Bring them in.  
2 You're going to read the names of those who have been  
3 dismissed. Check it over. Make sure she gets it right.  
4 THE CLERK: The ones that I'm dismissing are the marked off  
5 ones.  
6 THE COURT: State do you want to check this over?  
7 [Pause]  
8 THE COURT: All right. Let's do it.  
9 MR. SPEED: Thank you.  
10 THE COURT: Steve, bring them in.  
11 THE MARSHAL: Please rise for the jury.  
12 [Prospective jurors in at 11:22 a.m.]  
13 [Inside the presence of the prospective jurors]  
14 THE COURT: Please be seated.  
15 Good morning, ladies and gentlemen.  
16 PROSPECTIVE JURORS: Good morning.  
17 THE COURT: All right. I hope you all had a good weekend.  
18 Parties acknowledge presence of the venire?  
19 MS. DIGIACOMO: Yes, Your Honor.  
20 MR. SPEED: Defense does, Your Honor. Thank you.  
21 THE COURT: Thank you.  
22 Ladies and gentlemen, we had some things come up, so our  
23 timing wasn't particularly good. I want to thank you for being here. I  
24 know we've taken a lot of your time. And some of you are going to be  
25 released.



1                   Now, I'm sure that's a good thing and it's -- you're going to  
2 be sad that you weren't chosen. Again, it's just whether or not we feel  
3 that you would be appropriate for this case, as opposed to maybe some  
4 other case.

5                   On the other hand, I'm sure you're all saying, wow, we get to  
6 go home and -- but we appreciate your service because you have been  
7 here for four days now. I won't belabor it. I want to thank you. You  
8 have participated fully. So we certainly appreciate it.

9                   Cathy, the court clerk is now going to read off the names  
10 of -- you're going to read off the ones who are released, or the names of  
11 those who are chosen?

12                  THE CLERK: I'll do the released ones.

13                  THE COURT: Okay. So your names if you're called, wait  
14 until the end, you're going to be released, and you're going to be able to  
15 either do it at the third floor or do it online. Thank you.

16                  THE CLERK: Okay. The ones released: Alma Nicholas,  
17 Badge Number 245.

18                  Christopher Ball, Badge Number 124.

19                  Christopher Lornex [phonetic] --

20                  PROSPECTIVE JUROR 238: Lamoreaux.

21                  THE CLERK: -- Lamoreaux, Badge Number 238.

22                  Gelene Estrellado, Badge Number 200.

23                  Tracy [sic] Schneider, Badge Number 267.

24                  Julie Carothers, Badge Number 131.

25                  Bernard Plescher, Badge Number 176.

1 Kevin Delmour, Badge Number 028.  
2 William -- and I can't read that writing --  
3 PROSPECTIVE JUROR 268: Devirgilio.  
4 THE CLERK: Thank you. Badge Number 268.  
5 Kathryn Argentine, Badge Number 035.  
6 James Linares, Badge Number 235.  
7 Michael DiGiovanni, Badge Number 146.  
8 Adam Noyce, Badge Number 071.  
9 And is it Kahmishia Pender-Bay, Badge Number 094.  
10 James Tobiasson, Badge Number 154.  
11 And is it Kasidate Namboonruang, Badge Number 162.  
12 And Michael Tolman, Badge Number 164.  
13 THE COURT: Thank you. You may give the Marshal your  
14 badges, and we appreciate you being here.  
15 THE MARSHAL: Don't forget to validate your parking on the  
16 third floor on your way out, if you haven't already done it.  
17 [Prospective excused at 11:27 a.m.]  
18 THE COURT: All right. We're going to reseat you, so you're  
19 in the box. We're going to get rid of the chairs. And then in a second  
20 we'll swear you in. So go ahead.  
21 THE CLERK: Mr. Collins --  
22 JUROR 005: Yes.  
23 THE CLERK: -- I need you to move over just a seat.  
24 And then should be -- is that Mr. Nickerson?  
25 JUROR 254: Yes.

1 THE CLERK: You're going to seat -- be seated right next to  
2 Mr. Collins and go ahead and slide over.  
3 Courtney, you're going to step to the back row.  
4 Arlene, first, you'll be --  
5 JUROR 045: Yes.  
6 THE CLERK: -- sitting next to --  
7 THE MARSHAL: Wait. Stop, stop, stop. Is Courtney  
8 supposed to be 3 --  
9 THE CLERK: Courtney is next.  
10 THE MARSHAL: -- or 4?  
11 THE COURT: She's 4.  
12 THE CLERK: No, no, no. You stay there. Courtney goes right  
13 next to him.  
14 THE MARSHAL: Okay.  
15 THE CLERK: And then, Arlene, you'll be next to Courtney.  
16 Eugene, you'll go ahead and follow. You're in the back row.  
17 Go ahead, right next to Arlene.  
18 David Coleman, you can go to the back row too.  
19 And then, Alexis, you're going to slide all the way down.  
20 And, Nichole, you can go ahead --  
21 JUROR 054: Yes.  
22 THE CLERK: -- you can go ahead and follow.  
23 And then, Breanna, you'll be next to Nichole.  
24 UNIDENTIFIED SPEAKER: Breann or Brenna?  
25 UNIDENTIFIED SPEAKER: Brenna.

1 THE CLERK: Brenna, is it?  
2 THE COURT: Brenna.  
3 THE CLERK: Okay. Thank you.  
4 Jocelyn, you'll be next to Brenna.  
5 And is it --  
6 THE COURT: Parker --  
7 THE CLERK: Ken --  
8 THE COURT: -- isn't it?  
9 THE CLERK: -- no.  
10 MS. DIGIACOMO: Knitalya.  
11 THE CLERK: It's Knitalya, because Jocelyn is already back,  
12 right?  
13 MS. DIGIACOMO: Yes.  
14 THE CLERK: Yes. So --  
15 THE COURT: Oh, okay.  
16 THE CLERK: -- Knitalya, you're next.  
17 And then, Breanna [sic].  
18 And then Rhonda.  
19 And then Myron.  
20 THE COURT: All right. You can be seated. They're going to  
21 have to stand.  
22 Counsel, you can be seated.  
23 Swear them in.  
24 THE CLERK: Please rise. Raise your right hand.  
25 [The jury panel was sworn in by the Clerk]

1 THE CLERK: Please be seated.

2 THE COURT: Thank you. Ladies and gentlemen, I'm going to  
3 read some of the pre-trial instructions. Well, all of the pre-trial  
4 instructions. You'll get additional instructions at the end of the case.

5 There are certain ground rules that apply in every criminal  
6 case in the United States. It doesn't make any difference whether the  
7 case is prosecuted here in Las Vegas or in Texas.

8 First of all, the Defendant is presumed innocent. In a criminal  
9 trial the person on trial, the defendant, is presumed innocent. And I  
10 know that you all remember back to your government class, or civics, or  
11 whatever it was called, you learned about the presumption of innocence;  
12 however, I think that unless you work in the court system, maybe you  
13 didn't understand exactly what it means.

14 You ask yourselves, your friends, or anyone else what do you  
15 really mean by presumption of innocence when we know that the  
16 Defendant has been arrested by the police department and we know that  
17 the District Attorney is prosecuting the Defendant. And we also know  
18 that the police department didn't go out and select somebody at random  
19 to prosecute.

20 So we know that you know these things, and you could  
21 legitimately ask well, how can we maintain this presumption of  
22 innocence when we know that he's been arrested for something and we  
23 know that the District Attorney is prosecuting him. Ladies and  
24 gentlemen, I hope that what I have to say here will help you understand  
25 exactly what we mean by this presumption of innocence.

1           In the United States there are only two ways that any person  
2 can be guilty of a crime. The first way is that at the time of the  
3 arraignment when the charges are presented to the Defense, the  
4 Defendant is allowed to plead, and a Defendant may plead guilty, or the  
5 Defendant may plead not guilty.

6           If the Defendant pleads guilty, ultimately, he is judged guilty  
7 and sentenced.

8           On the other hand, if the Defendant pleads not guilty, he  
9 goes to trial, and if the Defendant goes to trial, the Defendant will only be  
10 guilty, and no longer innocent if a jury of all 12 members -- all 12  
11 members of the jury find two things to be true: First, that a crime  
12 occurred; and second, that the Defendant is the one who did it.

13           In every criminal prosecution the prosecuting entity has what  
14 we call the burden of proof. And that means that the prosecuting entity  
15 has to prove those two things to you. The prosecuting entity has to  
16 prove to you that a crime occurred, or that more than one crime  
17 occurred, and they have to prove to you that the Defendant did it, not  
18 someone else.

19           The burden of proof the prosecuting entity has in a criminal  
20 case is beyond a reasonable doubt a reasonable doubt. We're all pretty  
21 familiar with that term from TV and the crime dramas.

22           The term beyond a reasonable doubt was crafted by the  
23 legislature and the legislature of the State of Nevada is the one who  
24 adopted that definition.

25           The information -- the indictment is just a charging document

1 and is not evidence. Another basic ground rule that applies in every  
2 criminal prosecution is that the criminal information or the indictment  
3 filed in this case is a mere accusation and is not evidence of guilt.

4           Every case starts out with filing of some type of paperwork.  
5 It doesn't matter whether it's an indictment or an information. That's  
6 just the charging document. And our clerk is going to read you the  
7 charges to you in a little bit.

8           And all the charging document does is sets out what the  
9 allegations the State is making. And then during the trial it is the State's  
10 burden to prove the material allegations contained within the charging  
11 document, but the document itself has no evidentiary value.

12           So I'm going to read the long version of the admonishment,  
13 which explains, again, everything regarding what you're supposed to do  
14 and not do in the courthouse. Ladies and gentlemen, you're  
15 admonished that no juror may declare to a fellow juror any fact relating  
16 to this case of his own knowledge. And I stated to you before what that  
17 means is, if you find out during this trial that you know a witness, or you  
18 know of some facts that you haven't disclosed, you need to disclose that,  
19 and you do so by writing it down and giving it to Officer Moody. Then  
20 the parties and myself will discuss it and decide what is appropriate.

21           During the course of the trial the attorneys for both sides, the  
22 court personnel, other than Marshal Moody, are not permitted to talk to  
23 you. It's not that they're being antisocial. It's simply that they are bound  
24 by ethics and the law not to speak with you because to do so might  
25 contaminate your verdict. They're not even allowed to say hi in the

1 elevator, or in the hallway.

2 If you should recognize a witness -- I said that before -- or are  
3 familiar with the facts, you will have a pad of paper, you need to write it  
4 down. Put your name and badge number on it and give it to Officer  
5 Moody as soon as possible.

6 As I said, frequently, witnesses names are unfamiliar. Maybe  
7 that's somebody your child plays -- is a baseball coach for, et cetera.  
8 You know them by coach, or something like that. So you didn't  
9 recognize their name. You need to inform us immediately, and not  
10 discuss that with any other juror.

11 This case is a criminal case by the State of Nevada. And I  
12 sometimes may refer to it as the State v. Gustavo Adonay Gunera-  
13 Pastrana.

14 I hope I pronounced that correctly.

15 This case is based upon an indictment that's an information.  
16 The clerk will now read that to you.

17 THE CLERK: District Court Clark County, Nevada, Case  
18 Number C-16-318461, Department 28 Information, The State of Nevada  
19 Plaintiff v. Gustavo Adonay Gunera-Pastrana Defendant. State of  
20 Nevada, Clark County, Steve B. Wolfson, District Attorney within and for  
21 the County of Clark, State of Nevada, in the name, and by the authority  
22 of the State of Nevada, informs the Court that Gustavo Adonay Gunera-  
23 Pastrana, the Defendant named, having committed the crimes of  
24 lewdness with a child under the age of 14, and sexual assault with a  
25 minor under 14 years of age in the manner following, that the said



1 Defendant on, or between, August 1st, 2015, and July 11th, 2016, at, and  
2 within, the County of Clark, State of Nevada, contrary to the form, force,  
3 and effect, of the statutes, in such cases, made and provided, and against  
4 the peace and dignity of the State of Nevada.

5 Count I, lewdness with a child under the age of 14, did on, or  
6 between August 1, 2015, and August, 31st, 2015, willfully, lewdly,  
7 unlawfully, and feloniously commit a lewd and lascivious act upon, or  
8 with the body, or any part, or member thereof, of a child, to wit, M.M., a  
9 child under the age of 14 years of age, by touching the said M.M. genital  
10 area with the intent of arousing appealing to, or gratifying the lust,  
11 passions, or sexual desires of Defendant, or M.M.

12 Count II, sexual assault with a minor under 14 years of age,  
13 did on, or between June 1st, 2016, and June 30th, 2016, then and there  
14 willfully, unlawfully, and feloniously commit a sexual penetration upon  
15 M.M., a child under the age of 14 years, to wit, cunnilingus by placing his  
16 mouth, and/or tongue on, or in the genital area, or up opening of the said  
17 M.M.

18 Count III, sexual assault with a minor under 14 years of age,  
19 did on, or between June 1st, 2016, and June 30th, 2016, then and there,  
20 willfully, unlawfully, and feloniously commit a sexual penetration upon  
21 M.M., a child under the age of 14 years, to wit, digital penetration by  
22 inserting his fingers into the genital area, or opening of the said M.M.

23 Count IV, lewdness with a child under the age of 14, did on,  
24 or about July 11, 2016, willfully lewdly, unlawfully, and feloniously  
25 commit a lewd and lascivious act upon, or with the body, or any part, or

1 member thereof, of a child, to wit, M.M., a child under the age of 14  
2 years, by kissing the said M.M. with the intent of arousing, appealing to,  
3 or gratifying the lust and passion of sexual desires of Defendant or M.M.

4 Steve Wolfson, Clark County District Attorney, Sandra  
5 DiGiacomo, to which the Defendant has entered pleas of not guilty.

6 THE COURT: This case is based upon the information  
7 indictment, which has just been read to you by the clerk. You should  
8 distinctly understand that it is simply a charge and that it is not in any  
9 sense evidence of the allegations that it contains.

10 The Defendant has pled not guilty to the charges. The State,  
11 therefore, has the burden of proving each of the essential elements of  
12 the information or indictment beyond a reasonable doubt.

13 The purpose of this trial is to determine whether the State  
14 will meet that burden. It is your primary responsibility, as jurors to find  
15 and determine the facts.

16 Under our system of criminal procedure, you are the sole  
17 judge of the facts. You are to determine the facts from the testimony  
18 you hear and the other evidence including exhibits introduced in court.  
19 It is up to you to determine the inferences, which you feel may be  
20 properly drawn from the evidence.

21 The parties may sometimes present objections to some of  
22 the testimony, or other evidence. At times I may sustain those  
23 objections, or direct that you disregard some of the testimony. You must  
24 not consider any evidence to which an objection has been sustained, or  
25 which I have instructed you to disregard.

1           It's the duty of a lawyer to object to evidence which he or she  
2 believes may not properly be offered, and you should not be prejudiced  
3 in anyway against a lawyer who makes the objections on behalf of the  
4 party, which he or she represents.

5           Throughout the trial, if you cannot hear a question asked by  
6 an attorney, or an answer by a witness, please raise your hand. Don't be  
7 afraid. Just say excuse me I didn't hear that, and we'll have it repeated.

8           If you wish, you can take notes. As I said, we're going to  
9 have pads of paper for you to write notes on, but please don't get so  
10 intent on taking notes that you're writing down the answer to question 3,  
11 and they've already gone to question 4, and you're missing that answer.

12           You should rely upon your own memory of what was said  
13 and not be overly influenced by the notes of other jurors when you go  
14 back to deliberate.

15           This case will proceed in the following order. First, the State  
16 will make an opening statement outlining its case. This opening  
17 statement, like any other map, is just a synopsis. During the opening  
18 statement, the State will be telling you what they expect the evidence  
19 will be.

20           After the State opens, the Defendant has a right to make an  
21 opening statement, if he or she wishes to do so. Neither party is  
22 required to make an opening statement.

23           After the opening statements, the State will introduce  
24 evidence. At the conclusion of the State's evidence, the Defendant has a  
25 right to introduce evidence; however, please remember, the Defendant is

1 not obligated to present any evidence or to prove his or her evidence.

2           The law never imposes upon the Defendant in a criminal  
3 case the burden of calling or introducing any evidence -- calling any  
4 witnesses or introducing any evidence. The Defendant and his attorney  
5 can sit through the trial and do nothing, not ask any questions, not call  
6 any witnesses, do nothing at all, because the Defendant has no burden  
7 of proof in a criminal trial.

8           As we already discussed, the State has to prove two things to  
9 you: First, the State has to prove beyond a reasonable doubt that a  
10 crime occurred; and second, the State has to prove to you, again, beyond  
11 a reasonable doubt that the Defendant did it.

12           At the close of the Defendant's case, if any, the State may  
13 introduce rebuttal evidence.

14           At the conclusion of all the evidence, I will instruct you on the  
15 law. You must not be concerned with the wisdom of any rule of law  
16 stated in these instructions, or the instructions which I will read you at  
17 the end of the case.

18           Regardless of any opinion you may have, as to what the law  
19 ought to be, it would be a violation of your oath to base a verdict upon  
20 any other view of the law than that given to you by the Court.

21           Now, please, understand, ladies and gentlemen, this Court  
22 doesn't make up the law. That's done by the legislature, and I just follow  
23 the law as they have it written.

24           After the instructions on the law are given to you, the parties  
25 will have a chance to do closing arguments or summation. First, the

1 State will argue since they have the burden of proving the Defendant is  
2 guilty beyond a reasonable doubt. The State has the right to argue both  
3 opening and then close the arguments. The State gets to argue to you  
4 twice and the Defendant gets to argue to you once.

5 After the attorneys have presented their argument, you will  
6 retire, select a foreperson, and arrive at a verdict. Faithful performance  
7 by you of your duties is vital to the administration of justice.

8 It is your duty to determine the facts and to determine them  
9 from the evidence and the reasonable inferences arising from such  
10 evidence. And in so doing, you must not indulge in guesswork, or  
11 speculation.

12 The evidence which you are to consider consists of the  
13 testimony of the witnesses, and the exhibits admitted in evidence. The  
14 term witness means anyone who testifies in person, or by way of a  
15 deposition.

16 I don't think we have any depositions in this case.

17 Admission of evidence is governed by the rules of court, as I  
18 have stated, and it would be up to me to determine whether certain  
19 evidence is admissible. You must not concern yourself with objections  
20 made by the attorneys or the Court's reason for its rulings. You must not  
21 consider any testimony or exhibits to which an objection has been  
22 sustained or which I have ordered stricken.

23 Further, as I said before, you must not consider anything  
24 which you see or hear outside the court when the court is not in session,  
25 even if what you see or hear is said or done by one of the parties, or one

1 of the witnesses.

2 Make sure -- you will be given blue badges with Department  
3 28. Make sure you wear your blue badge at all times.

4 In every case there are two types of evidence: direct  
5 evidence and circumstantial. Direct evidence is testimony by a witness  
6 who -- that person saw or heard or did.

7 Circumstantial evidence is testimony or exhibits, which are  
8 proof of a particular fact from which if that fact is proven, you can infer  
9 the existence of a second fact. In other words, if you were to go outside  
10 now, and the streets were all wet, you could infer by circumstantial  
11 evidence that it rained.

12 If you go outside and there's rain hitting you, that's direct  
13 evidence that it's raining.

14 You may consider both direct and circumstantial evidence in  
15 deciding this case. The law permits you to give equal weight to both  
16 types of evidence, but it is up to you to decide how much weight to give  
17 any particular piece of evidence.

18 Please, remember opening statements and closing  
19 arguments, which are intended to help you, are not evidence. After all,  
20 the attorney are not witnesses.

21 You must not be influenced, in any degree, by any personal  
22 feeling of sympathy for, or prejudice against, any party in this case. Each  
23 side is entitled to the same fair and impartial consideration.

24 No statement, ruling, or remark, or facial expression, which I  
25 may make during the course of the trial is intended to indicate an

1 opinion, as to what facts are, or not to be given any weight. You are the  
2 ones who are determining the facts in this determination. You alone  
3 must decide upon the believability of the evidence and its weight and  
4 value.

5           In considering the weight and value of the testimony of any  
6 witness, you may take into consideration the appearance, attitude, and  
7 behavior of the witness; the interest of the witness in the outcome in the  
8 case; the relationship of the witness to any party; the inclination of the  
9 witness to speak truthfully or not; the probability or improbability of the  
10 witness's statements; and all other facts and circumstances and  
11 evidence. Thus, you may give the testimony of any witness just such  
12 weight and value as you believe that witness is entitled to receive.

13           Again, let me remind you that until this case is submitted to  
14 you, do not talk to each other about anything to do with the case. The  
15 only time you can discuss this case is back in the jury deliberation after  
16 the conclusion of all the evidence and closing arguments.

17           Do not talk to anybody else about the case, or anyone who  
18 has anything to do with the case.

19           Don't do any independent research. Don't Google anything.  
20 Don't do any research or experiments of any kind regarding anything to  
21 do with this case.

22           Don't let anybody talk to you about this case, and that  
23 includes your fellow jurors.

24           Do not read any news articles, listen to radio, television.  
25 Again, don't go on the internet, or do anything of any kind regarding

1 research.

2 Do not make up your mind about what the verdict should be  
3 until after you've gone into the jury deliberation room to deliberate with  
4 your fellow jurors.

5 At the end of the trial, you'll make up your decision based up  
6 on what you recall of the evidence. You will not have a written transcript  
7 to consult, even though we have a court recorder. It gets the evidence  
8 from the recording. It's not typed up and there are no transcripts  
9 prepared. Read backs are time consuming, and therefore, I would urge  
10 you to pay close attention to the testimony as it is given.

11 In Nevada, as jurors, may ask questions of the witnesses.  
12 You do so by writing it down and putting your badge number. After the  
13 witness has finished testifying, I'll ask you if you have any questions.  
14 Again, write it down and put your badge number. You'll be giving it to  
15 Officer Moody.

16 Not every question you want to ask will be given to the  
17 witness. Some questions are improper. Some questions are better  
18 answered by another witness. The parties and I will discuss it and make  
19 a determination of whether not it's a proper question. Don't take any  
20 emphasis or read anything into whether your question was asked or not.

21 Okay. That is the pre-trial instructions.

22 THE MARSHAL: Your Honor.

23 THE COURT: Yes.

24 THE MARSHAL: Judge mistakenly told you you'll write your  
25 badge number, you will write your juror number.



1 THE COURT: Sorry.

2 THE MARSHAL: Okay. You are Juror Number 1, 2, 3, 4, 5, 6,  
3 7, 8, 9, 10, 11, 12, 13, 14, 15. That is your juror number. That's what you  
4 will go by.

5 THE COURT: Thank you. That's correct.

6 State, opening.

7 MS. DIGIACOMO: Thank you, Your Honor.

8 THE MARSHAL: Judge, if I can give them notepads and their  
9 pens.

10 THE COURT: Yeah. Counsel, approach.

11 [Sidebar begins at 11:56 a.m.]

12 THE COURT: What do you want to do? I've been going since  
13 9. I don't know what you guys want to --

14 MS. MACHNICH: No preference.

15 MS. DIGIACOMO: It's fine if you want to break now for lunch  
16 and we can do it at 1. Like I said, I have a witness coming at noon, so it's  
17 up to you --

18 THE COURT: You want to get to that? You want to start at 1?

19 MS. MACHNICH: We have no preference.

20 THE COURT: Okay.

21 MS. DIGIACOMO: Opening mine is not long.

22 THE COURT: Okay. Then we'll do that. I've been going  
23 since 8:30 so --

24 MS. DIGIACOMO: Okay.

25 THE COURT: -- all right. We'll take our break.

1 MS. MACHNICH: Thank you.

2 MR. SPEED: Thank you.

3 MS. DIGIACOMO: Thank you.

4 [Sidebar ends at 11:56 a.m.]

5 THE COURT: All right. Ladies and gentlemen, since we've all  
6 been, my staff, going since about 8:30, we're going to go ahead and let  
7 you go to lunch, get some lunch, have you back here at like five after  
8 1:00.

9 During this recess you're once again admonished, do not talk  
10 or converse amongst yourselves or with anyone else on any subject  
11 connected with this trial, or read, watch or listen to any report of, or  
12 commentary on this trial, or any person connected with this trial by any  
13 medium of information, including, without limitation, newspapers,  
14 television, radio or internet.

15 Do not form or express any opinion on any subject  
16 connected with this trial until the case is finally submitted to you. We'll  
17 be in recess, you'll get your blue badges, and have a good lunch.

18 [Jury out at 11:57 a.m.]

19 [Recess taken from 11:57 a.m. to 1:11 p.m.]

20 [Outside the presence of the Jury]

21 THE COURT: Okay. On Wednesday I did get somebody to  
22 volunteer. So we can start as early as 8:30 if you want? I don't know.

23 [Counsel confer]

24 MS. SUDANO: We'll make that one.

25 THE COURT: All right. So we'll go from 8:30 until what was

1 it?

2 MS. DIGIACOMO: I have to leave the courthouse by 1:30,

3 so --

4 THE COURT: Yeah. We can't go all the way through, that's --

5 MS. DIGIACOMO: Maybe 12:30.

6 THE COURT: -- five hours?

7 MS. DIGIACOMO: That's four hours, 8:30 to 12:30 is four,

8 though.

9 MS. MACHNICH: Yeah.

10 THE COURT: Yeah. All right. And then I don't see bringing  
11 them back -- I'd like to, I don't see --

12 MS. DIGIACOMO: We could --

13 THE COURT: Do you know when you --

14 MS. DIGIACOMO: No.

15 THE COURT: Well, I guess with the Springs you do know  
16 you're done at a certain time?

17 MS. DIGIACOMO: Correct. Because they don't usually run  
18 late. So I should be back here by 3:00. We could go until 1:00 and give  
19 them a two hour break for lunch.

20 THE COURT: Yeah.

21 MS. DIGIACOMO: Come back from 3:00 to 5:00.

22 THE COURT: Yeah. All right. We'll see.

23 THE MARSHAL: We're ready, Judge.

24 [Clerk and counsel confer]

25 THE COURT: All right. Nothing outside, you said?

1 MS. SUDANO: No, Your Honor.  
2 THE COURT: Bring them in.  
3 MR. SPEED: Okay.  
4 THE MARSHAL: Please rise for the jury.  
5 [Jury in at 1:12 p.m.]  
6 [Inside the presence of the jury]  
7 THE COURT: Please be seated.  
8 Do the parties acknowledge presence of the jury?  
9 MS. DIGIACOMO: Yes, Your Honor.  
10 MR. SPEED: Yes, Your Honor.  
11 THE COURT: Thank you.  
12 Ladies and gentlemen, tomorrow, we're going to start at  
13 10:30, I have morning calendar. Now as far as I know I got rid of my  
14 morning calendar for Wednesday and we so will start at 8:30, and we're  
15 going to give you -- you're going to get like a two hour lunch, 8:30 until  
16 like 12:00, something like that, and then we have to come back at 3:00 for  
17 a couple of hours; that's where it is as of this minute.  
18 I had somebody volunteer, so it helps us to stay on,  
19 hopefully to stay on track. All right.  
20 THE MARSHAL: Judge?  
21 THE COURT: Yeah.  
22 THE MARSHAL: The jury wanted to inquire, now that we're  
23 starting how long was the trial going to take?  
24 THE COURT: If I had a crystal ball, I can't tell you how many  
25 times a day people want to know what's going to happen, and because I

1 am doing the Wednesday thing, I'm still hopeful we'll be done on Friday,  
2 but there's certainly no guarantees. We're trying to get it done as quick  
3 as possible.

4 Okay. Opening.

5 MS. DIGIACOMO: Thank you, Your Honor. May I approach  
6 the clerk?

7 THE COURT: Yes.

8 [Pause]

9 MS. DIGIACOMO: And I think I need help.

10 THE COURT: Steve, can you help her out.

11 [Pause]

12 STATE'S OPENING STATEMENT

13 BY MS. DIGIACOMO:

14 Oh, there we go. Okay.

15 Good afternoon, ladies and gentlemen. This is Meily Moran,  
16 you heard her initials in the information as "M.M.," and we're here  
17 because the Defendant, Gustavo Gunera-Pastrana sexually abused her  
18 when she was 12 and 13 years old. This picture was taken the day the  
19 police were called, on July 12th, 2016. And it disappeared, but that's  
20 okay.

21 So it started back when she was 12 years old, in August of  
22 2015. Earlier that year she had had surgery on one of her ovaries, so she  
23 had some incisions on her stomach, and the Defendant asked her to see  
24 her incisions, and so she showed him, thinking he was just going to  
25 check the scars, but what he did was he took his hand, and he rubbed

1 her belly and then he kept going.

2 He went down inside her pants, and he took his hand and he  
3 rubbed the outside of her vagina, that's lewdness with a minor under the  
4 age of 14. She asked him about it a few weeks later, "Why did you do  
5 that," and he said it was to punish her, which didn't make sense to her.  
6 But she was thinking, it's not going to happen again, so she didn't tell  
7 anyone. She didn't tell her mom, and she didn't tell her oldest brother,  
8 who's about a year younger than her, Jose.

9 Fast forward now to February of 2016. At the time back then  
10 Meily was living with her mom, Meili, and forgive us right now if we get  
11 that confused during this trial; Meily and Meili. She was living with her  
12 brother Jose, and then there were two children that the Defendant and  
13 her mom had two babies, that were also in the home.

14 When the second one was born in February of 2016, the next  
15 day, while her mom's in the hospital, she went with the Defendant to buy  
16 a car seat, and the Defendant asked her, "Do you want to have sex with  
17 me?" And she said, "No." And he asked her that a couple of times and  
18 she said, no. But in June of 2016, she's home, babysitting both the little  
19 babies and the Defendant goes to work with her brother Jose, and her  
20 mom's at her job, and the Defendant comes home alone.

21 So it's just her and the two babies and the Defendant, and he  
22 told her to lay down on the bed, and she didn't want to, but she  
23 complied, because she was scared. And when she was laying on the bed  
24 he took down her pants. He used his mouth and his tongue, as she  
25 described it, to kiss her vagina. "To kiss the inside part where my period

1 comes out," and that's a sexual assault with a minor under 14.

2 But he didn't stop there, he also used his hand to touch her  
3 vagina, and he used his finger to digitally penetrate her. He inserted his  
4 finger into her vagina. That's another count of sexual assault under 14.  
5 He pulled down his pants, and she rolled over and was like, "No." And  
6 then the baby started crying, so he ended up stopping and he left.

7 But a few weeks later, on July 11, 2016, the day before this  
8 photograph was taken, he came home from work, it was her watching  
9 the babies. Jose was at work with the Defendant, and her mom was at  
10 work, but the Defendant came home without Jose, and he told her that  
11 day, "Your time is up. You're going to have sexual relations with me,  
12 tomorrow when your mom's at work." And he used his mouth and his  
13 tongue, and he kissed her on the lips, and that's another count of  
14 lewdness with a minor under 14.

15 The minute he kind of was away, he went to wash the car  
16 with Jose or something, and she was kind of alone, she called her mom  
17 frantic, crying, and she finally told her mom what she hadn't been able to  
18 tell her for a year. She told her what he had been doing, that he had  
19 been touching her inappropriately.

20 Her mom got home that night, and she had told her brother,  
21 Jose, she confided in him a few months before, and so they all knew  
22 what was going to happen, but nobody said anything. The next morning  
23 when the Defendant leaves the house with Jose to go to work, Meily's  
24 mom called the police, and the police were called, and that's why we're  
25 here.

1                   We're here because the Defendant committed these crimes.  
2                   He committed sexual abuse against Meily, and we're here to present our  
3                   case to you. And at the end of the case, at the conclusion of all the  
4                   evidence, the State submits you are going to find the Defendant guilty of  
5                   the two counts of lewdness with a minor, and the two counts of sexual  
6                   assault with a minor. Because Meily was only 12 or 13 years at that  
7                   time, what confused by what happened, and the Defendant took  
8                   advantage of her, and I'm going to ask you to convict him at the end,  
9                   when this all over.

10                  Thank you.

11                  THE COURT: Thank you. Defense.

12                  MS. MACHNICH: Thanks, Your Honor. And we won't be  
13                  using any of the technology, so --

14                  THE COURT: Do you want the --

15                  MS. MACHNICH: Oh, I probably should. Thank you. Can  
16                  you hear me? Fantastic.

17                  MS. MACHNICH: All right. May I proceed --

18                  THE COURT: Go ahead.

19                  MS. MACHNICH: -- Your Honor? Thank you.

20                                 DEFENDANT'S OPENING STATEMENT

21                  BY MS. MACHNICH:

22                         Ladies and gentlemen of the jury, the evidence will not show  
23                         that that occurred. The truth doesn't change. We want to thank you for  
24                         being here, Gustavo wants to thank you for being here. The last hope of  
25                         an innocent man is the jury of his peers.



1 Over the next week you will hear evidence presented before  
2 this Court, and the evidence will show that Meily, the complainant, had  
3 reasons to falsely accuse Gustavo. The final straw for Meily, was  
4 Gustavo's threat to throw her out of the house, on July 11th, 2016, the  
5 day before police were called. He was unhappy she wasn't working. Her  
6 younger brother, Jose, was working. He went to work with Gustavo,  
7 helped him with laying the tile. Her mother was working.

8 Meily didn't want to work at that point until she was older,  
9 but she was home for the summer, and Meily's negative feeling towards  
10 Gustavo had been building. Gustavo favored the two babies of the  
11 family, his two biological kids. Meily wanted him gone, and she wanted  
12 her family together.

13 You'll also hear testimony that Meily, the complainant, she  
14 had had health class the semester before she made this allegation. She  
15 learned about sexual relations, and she had also heard about a  
16 classmate who had made sexual accusations against her stepfather and  
17 learned that that classmate didn't have to live with her stepfather  
18 anymore.

19 Ladies and gentlemen, the evidence in this case will not  
20 show that any sexual abuse or lewd conduct occurred, between Gustavo  
21 and Meily. You will not be presented with any physical evidence,  
22 whatsoever, to support her claims. You'll hear of no DNA, a  
23 compromising location. You will see no video or pictures showing any  
24 misdeeds. You will see no physical signs of injury or abuse to Meily.

25 You will not be presented with any eyewitness testimony.

1 No disinterested third party witnesses, to say, I saw a change in her, or I  
2 remember that day. You will hear no confession by Gustavo. He has  
3 said he did not do it and --

4 MS. DIGIACOMO: Objection, Your Honor.

5 THE COURT: Sustained.

6 MS. DIGIACOMO: I'd ask the jury to disregard that.

7 THE COURT: Counsel, approach.

8 [Sidebar begins at 1:25 p.m.]

9 MS. MACHNICH: The rest of that --

10 THE COURT: Counsel --

11 MS. MACHNICH: -- statement, was not guilty, by pleading  
12 not guilty. He said he did not do this by pleading not guilty, which is a  
13 correct statement to the law.

14 MS. DIGIACOMO: Well, she paused pretty long.

15 THE COURT: Yes.

16 MS. DIGIACOMO: Because that is not the way it came  
17 across.

18 MS. MACHNICH: But --

19 MS. DIGIACOMO: She's testifying.

20 MS. MACHNICH: I'm not.

21 THE COURT: All right. I didn't even hear you continue, that's  
22 how long you stopped. All right. I'm sustaining the objection.

23 MS. MACHNICH: Okay.

24 THE COURT: Instructing them to disregard.

25 MS. MACHNICH: Okay.

1 MS. DIGIACOMO: Thank you.

2 [Sidebar ends at 1:25 p.m.]

3 THE COURT: The objection is sustained. The jury will  
4 disregard counsel's last remarks.

5 BY MS. MACHNICH:

6 And you have heard that Gustavo has pled not guilty in this  
7 case, but you will hear a story, you will. And the evidence will show that  
8 important details of that story changed and evolved over time. Pay  
9 attention to Meily's statements, her testimony, and you'll hear different  
10 versions and the facts that she cannot keep straight.

11 After you've heard all of the evidence in this case, over this  
12 next, approximately one week, you will see that Meily, the complainant,  
13 wanted Gustavo gone, but not for reasons of sexual abuse. Gustavo is  
14 confident that you will see that the State could not and did not prove any  
15 of these allegations beyond a reasonable doubt, that Gustavo did not do  
16 what she said.

17 Mr. Speed will come before you and he will ask you to return  
18 a verdict of not guilty on each and every charge brought by the State of  
19 Nevada, because ladies and gentlemen, the truth doesn't change. Thank  
20 you.

21 THE COURT: Thank you, Counsel.

22 State --

23 MS. MACHNICH: Thank you.

24 THE COURT: -- call your first witness.

25 MS. DIGIACOMO: Thank you. The State calls Officer Alan

1 Kravetz.

2 THE MARSHAL: Watch your step, Officer. Can you remain  
3 standing face the clerk of the court.

4 THE CLERK: Please raise your right hand.

5 MATTHEW A. KRAVETZ, STATE'S WITNESS, SWORN

6 THE CLERK: Please be seated.

7 THE WITNESS: Thank you.

8 MS. MACHNICH: Please state your name and spell it for the  
9 record.

10 THE WITNESS: Matthew Kravetz, M-A-T-T-H-E-W K-R-A-V-E-  
11 T-Z.

12 THE CLERK: Great.

13 MS. DIGIACOMO: The Court's indulgence.

14 [Pause]

15 MS. DIGIACOMO: May I, Your Honor?

16 THE COURT: Go ahead.

17 DIRECT EXAMINATION

18 BY MS. DIGIACOMO:

19 Q Officer, how are you employed?

20 A With Las Vegas Metropolitan Police Department.

21 Q And what's your assignment?

22 A I am in patrol, in the southeast area command.

23 Q And how long have you been with Metro, overall?

24 A Four years.

25 Q Okay. What is your current -- you said you're in patrol, but

1 do you have any additional duties besides --

2 A Yeah. I'm a field training officer.

3 Q All right. Now I want to direct your attention back to July of  
4 2016. Were you with Metro at that time?

5 A Yes, I was.

6 Q Okay. And on that date in the morning hours were you so --  
7 excuse me, on July 12th, 2016 in the morning hours, were you so  
8 employed and working?

9 A Yes, I was.

10 Q At that time were you an FTO?

11 A No, I was not.

12 Q Okay. What were you doing at that time?

13 A I was in field training at that time as a new officer.

14 Q Right. So you were in patrol?

15 A Yes, I was.

16 Q And you were wearing your uniform, such as you're wearing  
17 in court here today?

18 A Yes, I was.

19 Q All right. Did a call come out at the Miracle Mile Trailer Park?

20 A Yes, it did.

21 Q All right. Did you respond to that call?

22 A Yes, I did.

23 Q Did you respond alone or with other officers?

24 A Additional officer.

25 Q Okay. And who -- well, you said you were field training at

1 the time?

2 A Yes, I was.

3 Q Did you have a field training officer?

4 A I did.

5 Q And who was that?

6 A It was my FTO, Delaria. Field training Officer Delaria at the  
7 time.

8 Q Were you both riding in the same car, or different vehicles?

9 A Same car.

10 Q All right. When you responded to the trailer park were other  
11 officers also responding to the call?

12 A Yes. An additional unit, which was a training unit as well,  
13 arrived to assist.

14 Q And who was that?

15 A Officer Larson and his FTO.

16 Q All right. Do you remember who his FTO was?

17 A Not off the top of my head, though.

18 Q All right. Does Dransfield sound familiar?

19 A Yes, it does.

20 Q Do you recall approximately what time in the morning you  
21 got there?

22 A I know it was later, mid-morning, maybe -- mid-morning.

23 Q Okay. When you got there did you go immediately up to the  
24 door, or did you wait for the other officers to arrive?

25 A I waited for my partners to arrive.

1 Q Right. And then what happened?

2 A We discussed where we were, and then we made our  
3 approach to the home.

4 Q All right. When you first got to the home were there  
5 residents inside?

6 A Yes.

7 Q And do you recall what space it was?

8 A It was -- I believe it was 254.

9 Q Okay.

10 MS. DIGIACOMO: Your Honor, may I approach?

11 THE COURT: Yes.

12 BY MS. DIGIACOMO:

13 Q Officer, I'm going to show you what's been marked for  
14 identification as State's proposed Exhibits 1, 2, 3 and 5, which had  
15 previously been shown to Defense counsel. Could you look at each of  
16 those and just let me know when you're done?

17 [Witness reviews document]

18 THE WITNESS: All done.

19 BY MS. DIGIACOMO:

20 Q Okay. Do you recognize what's depicted in each one of these  
21 State's proposed exhibits?

22 A Yes, I do.

23 Q All right. I'm showing you State's Proposed Exhibit 1. Is this  
24 a diagram of a the Miracle Mile Trailer Park?

25 A Yes, it is.

1 Q Okay. It fairly and accurately depicts the location?

2 A Yes, it does.

3 MS. DIGIACOMO: Your Honor, I'd move for admission of  
4 State's proposed Exhibit 1.

5 MS. MACHNICH: No objection, Your Honor.

6 THE COURT: It'll be admitted.

7 [State's Exhibit 1 admitted into evidence]

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q Now I'm going to show you State's proposed Exhibit  
11 Number 2. Is this a satellite aerial above the Miracle Mile Park?

12 A Yes, it is.

13 Q All right. And does that fairly and accurately depict the way  
14 the front of that park looks?

15 A Yes, it does.

16 MS. DIGIACOMO: Your Honor, I move for admission of  
17 State's proposed Exhibit Number 2.

18 MS. MACHNICH: No objection.

19 THE COURT: It'll be admitted.

20 [State's Exhibit 2 admitted into evidence]

21 BY MS. DIGIACOMO:

22 Q All right. Now you said that when you first got there you  
23 came into contact with some individuals?

24 A Yes, I did.

25 Q Do you remember who you came into contact with?



1 A A juvenile and an adult female.

2 Q All right. Now I'm showing you State's proposed Exhibit  
3 Number 3, do you recognize that individual?

4 A Yes, I do.

5 Q And how do you recognize her?

6 A At the victim.

7 Q All right. Is that Meily?

8 A Yes, it is.

9 Q And is this the way she looked when you arrived on July  
10 12th, 2016?

11 A Yes, it is.

12 MS. DIGIACOMO: Your Honor, I move for admission of  
13 State's proposed Exhibit Number 3?

14 THE COURT: Objection?

15 MS. MACHNICH: No objection, Your Honor.

16 THE COURT: All right. It will be admitted.

17 [State's Exhibit 3 admitted into evidence]

18 BY MS. DIGIACOMO:

19 Q And lastly, I show you State's proposed Exhibit Number 5, do  
20 you recognize who's depicted in that photograph?

21 A Yes, I do.

22 Q And who is that?

23 A That is the mother of the victim.

24 MS. DIGIACOMO: Your Honor, I'd move for admission for  
25 State's proposed Exhibit Number 5.

1 THE COURT: Any objection?

2 MS. MACHNICH: No objection, Your Honor.

3 [State's Exhibit 5 admitted into evidence]

4 MS. DIGIACOMO: And I would ask to publish?

5 THE COURT: Go ahead.

6 MS. DIGIACOMO: Thank you.

7 BY MS. DIGIACOMO:

8 Q All right. I'm showing you State's Exhibit Number 1. Do you  
9 recognize what's depicted there?

10 A Yes, I do.

11 Q Okay. This Miracle Mile Park that we're talking about, you  
12 said it's space Number 254, where is it generally located?

13 A It's closer to the Boulder Highway entrance.

14 Q Okay. So there's an entrance -- is this Boulder Highway  
15 here --

16 A Yes, it is.

17 Q -- on the top right of the screen?

18 A Yes.

19 Q All right. And so when you would go into trailer park how  
20 would you get to 254?

21 A I would enter off Boulder Highway, depending on where I  
22 was coming from, and then as I made my way to the entrance, well, you  
23 can see here off Boulder Highway, I would make that left or south turn  
24 towards Pine Drive, and then the spot is located on the south side of the  
25 complex there.

1 Q All right. Now you mentioned Pine Drive. Is that Pine Drive, I  
2 guess notated here?

3 A Yes.

4 Q And there's a right angle that turns to another street, which is  
5 Elm Drive, that comes in off of --

6 A Correct.

7 Q -- Boulder Highway?

8 A Correct.

9 Q Okay. So did you come in and then make a left-hand turn to  
10 get to Pine Drive?

11 A Yes, I did.

12 Q All right. And where's 254 located?

13 A 254 is on the south side of the complex, located on Pine  
14 Drive. It's five spaces south, counting from the corner lot.

15 Q Okay. So counting from this lot?

16 A Yes.

17 Q So 254 is almost -- well, not quite in the middle --

18 A Correct.

19 Q -- but just northeast of the middle?

20 A Correct.

21 Q Okay. Now I'm showing you State's Exhibit Number 2. Is  
22 this a satellite view, as we saw in State's Exhibit 1?

23 A Correct.

24 Q Okay. And where would the residence be here?

25 A Over the satellite view, it's hard to tell when the screen is

1 little.

2 Q Would it be easier to see it not on the screen, because it's  
3 kind of washed out?

4 A Yes.

5 MS. DIGIACOMO: May I approach, Your Honor?

6 THE COURT: Yes, go ahead.

7 THE WITNESS: Yeah. So 1, 2, 3, 4, 5. So like I said, it's hard  
8 to depict here, but with the white roof, adjacent to the other single unit  
9 home that's right next to it. So about halfway down, but one to the right  
10 of the middle.

11 BY MS. DIGIACOMO:

12 Q Where would it be in relation to where Pine is, the word  
13 "Pine" is?

14 A I guess, if you're looking at it, underneath Pine.

15 Q Okay. So now I'm going to put it back on the screen, and I  
16 know it's washed out. So here's Pine Drive, right?

17 A Correct.

18 Q So when you say "underneath it" are you talking about the --

19 A Yes.

20 Q -- one of these trailers right --

21 A Correct.

22 Q -- underneath the word Pine?

23 A Yes.

24 Q Okay. Now when you arrive on a call do you pull right up  
25 into the driveway of the residence you're going to?

1 A No, we do not.

2 Q And what do you do?

3 A As officers, for safety issues, we usually park two houses  
4 down from the target residence of a call that we're responding to.

5 Q Right. Is that what you did in this case?

6 A Yes.

7 Q Okay. Now when you responded do you know if you had a  
8 body cam --

9 A Yes.

10 Q -- on you?

11 A Yes, I did.

12 Q Right. Now back in 2016 did everyone have a bodycam on  
13 the Metropolitan Police Department?

14 A Not everybody.

15 Q Right. Just was it new people?

16 A Yes.

17 Q Okay. Did you activate your bodycam when you arrived?

18 A Yes, I did.

19 Q And how -- let's say you do activate your bodycam on a call,  
20 what do you do with it when you're done with your shift?

21 A I plug into the charging downloading stations at our area of  
22 commands, to charge the battery and download all the footage from that  
23 day.

24 Q Okay. Is it downloaded by event number?

25 A Yes.

1 Q Now can you explain to the jury what an event number is?

2 A An event number is the type of call, and the call for service.

3 Basically it's a number associated with the call. That somebody called 9-

4 1-1, a call, an event number is generated, say number 1 for the year, so

5 like January 1st, would be -- and the first call the year would be number

6 1, and then it continues each month from there, and it resets every

7 month, after the month ends, and then it resets to zero for that month,

8 and then continually builds as the month progresses.

9 Q Is it fair to say that an event number is unique to one event?

10 A Yes.

11 Q Okay. So you're not going to have one event number that

12 goes to like six different events?

13 A No.

14 Q Okay. And so when you down or upload your bodycam it

15 would go with the specific event?

16 A Yes, it would.

17 Q Back then when you would go out on a call would you leave

18 your bodycam running the entire time you're on the call?

19 A Not, not necessarily.

20 Q Okay. You would have to turn it on and off --

21 A Yes.

22 Q -- as needed? All right.

23 [Counsel confer]

24 MS. DIGIACOMO: May I approach, Your Honor?

25 THE COURT: Yes.

1 BY MS. DIGIACOMO:

2 Q Sir, first of all I'm going to show you what's been marked for  
3 identification, is State's proposed Exhibit 8. Do you recognize this disc?

4 A Yes, I do.

5 Q How do you recognize that disc?

6 A I observed it.

7 Q And how do you know you observed that disc?

8 A I watched it with you.

9 Q Okay. And did you do anything on State's proposed Exhibit  
10 8, that lets you know that that's the exact disc you watched?

11 A Yes. Those are my -- that's my initials on the disc that I've  
12 viewed.

13 Q All right. Now when you say your initials, can you state --

14 A So my initials for law enforcement is going to be "M" for my  
15 first name, 15346, which is my badge number, and then "K" which is my  
16 last name.

17 Q All right. And is that how you would normally mark  
18 evidence, or anything that you do in your job?

19 A Yes, it would.

20 Q All right. This disc contains what on it, what would you  
21 expect to be on this disc?

22 A A bodycam, clearing house -- it would be my initial entrance  
23 into the residence, clearing of the house to make sure it's safe.

24 Q All right. Now you use your bodycam and activate it is it just  
25 video that it records, or does it also record sound?

1 A It records both --

2 Q Okay.

3 A -- video and audio.

4 Q All right. Now, the video that you watched in State's  
5 proposed Exhibit 8, did it have sound or no sound?

6 A No sound.

7 MS. DIGIACOMO: Your Honor, I move for admission of  
8 State's proposed Exhibit Number 8.

9 THE COURT: Any objection?

10 MS. MACHNICH: Your Honor, no objection to 8.

11 THE COURT: It will be admitted.

12 [State's Exhibit 8 admitted into evidence]

13 BY MS. DIGIACOMO:

14 Q Okay. Now I'm showing you State's proposed Exhibits 9 and  
15 10. Do you recognize these?

16 A Yes, I do.

17 Q Okay. How do you recognize those?

18 A They're discs that I viewed with you, as well, with my initials  
19 on it.

20 Q Your initials and your P-number, your personnel number?

21 A Yes.

22 Q Okay. And what should be depicted on these discs?

23 A This is going to be the interview that took place with me and  
24 the victim.

25 Q All right. Now on State's proposed Exhibits 9 and 10, is that



1 your initial, I guess when you first started talking to her?

2 A Yes.

3 Q Okay. Is one, State's proposed Exhibit 9, with no sound?

4 A Yes, it is.

5 Q And then State's proposed Exhibit 10 is with sound?

6 A Yes, it is.

7 MS. DIGIACOMO: Your Honor, at this time I would move for  
8 admission of only State's proposed Exhibit Number 9, the no sound.

9 THE COURT: Any objection.

10 MS. MACHNICH: Your Honor, may we approach?

11 THE COURT: Yes.

12 [Sidebar begins at 1:41 p.m.]

13 MS. MACHNICH: Your Honor, obviously we were provided  
14 with body cam footage ahead of time. We --

15 THE COURT: I'm sorry, what?

16 MS. MACHNICH: Your Honor, we were provided with body  
17 cam footage ahead of time, so I'm not saying we haven't seen that. We  
18 have received, but not seen what's on the disk. We obviously want the  
19 State to act in an abundance of caution. We don't know exactly what is  
20 depicted on it, how long it goes, what it shows. I mean we know  
21 generally what she's referring to, but we don't know the exact  
22 parameters.

23 MS. DIGIACOMO: This disk, Your Honor, it shows when he  
24 first started questioning her. And when he asked her about what he had  
25 done, she breaks down crying and then as he continues to interview her,

1 you can see that she's crying and has tears. And she's -- they're just  
2 doing the initial interview. And so the State is proposing it to show her  
3 demeanor. You know, they just got up in opening statements and  
4 accused her of being a liar, and so it --

5 THE COURT: How long is it?

6 MS. DIGIACOMO: I don't know, like what, a minute?

7 MS. SUDANO: The first one.

8 MS. DIGIACOMO: Maybe a minute.

9 THE COURT: You gave it to them [indiscernible] do this  
10 outside the presence. I don't know if there's anything else after this, but  
11 you should --

12 MS. DIGIACOMO: Well, I did talk to Mr. Speed ahead of time  
13 before we started, and he didn't ask to see the video, but I told him what  
14 was on it.

15 MR. SPEED: Well, we have the body cam --

16 MS. DIGIACOMO: Yeah.

17 MR. SPEED: -- so we're not --

18 MS. DIGIACOMO: It's not --

19 MR. SPEED: That was from the body cam [indiscernible].

20 MS. DIGIACOMO: It's not --

21 MR. SPEED: These are [indiscernible].

22 MS. DIGIACOMO: Correct. Just this one is just to show her  
23 demeanor.

24 THE COURT: I don't see anything wrong. What's the  
25 objection?

1 MS. MACHNICH: Our objection only extends as far as we are  
2 concerned with what is included thereon and to make sure there is really  
3 no sound, but --

4 MS. DIGIACOMO: There is not. There is no sound.

5 MS. MACHNICH: We'll leave it to your discretion.

6 THE COURT: Well, I'm going to allow it. If you want to play  
7 this, you know, you're welcome to do that.

8 MS. DIGIACOMO: And just while we're up here, the next  
9 one, Your Honor, is also when he's talking to her because he talks to her  
10 initially, then he talks to his partner, then talks to her again. And again  
11 it's just there's one sound, one no sound. We intend to offer the one  
12 with no sound because it just shows her demeanor during the interview.

13 THE COURT: The same concern?

14 MS. MACHNICH: The same concern and the same objection.  
15 And we'll obviously commit to Your Honor's discretion on both of those.

16 THE COURT: All right. I'll allow it. If you want to play  
17 additional parts you're welcome to do so.

18 MS. DIGIACOMO: Thank you, Your Honor.

19 [Sidebar ends at 1:43 p.m.]

20 MS. DIGIACOMO: And, Your Honor, just for the record I had  
21 just moved to admit only State's Proposed Exhibit number 9, which is  
22 the initial interview with no sound.

23 THE COURT: And I'm going to allow it.

24 MS. DIGIACOMO: Thank you.

25 UNIDENTIFIED FEMALE SPEAKER: Was there an objection

1 on that?

2 THE COURT: Yes, there was an objection. It's on the record.

3 BY MS. DIGIACOMO:

4 Q All right. Lastly, I'm going to show you State's Proposed  
5 Exhibit No. 11 and State's Proposed Exhibit No. 12. If you could look at  
6 those and let me know do you recognize them?

7 A Yes, I do.

8 Q Are these additional videos that you viewed in my office?

9 A Yes, I have.

10 Q All right. And I guess I should make clear, all of these that  
11 we're talking about from eight, nine, ten, eleven, and twelve, this is not  
12 your entire body cam, it's just certain portions?

13 A Correct.

14 Q Okay. Now, with regard to State's Proposed Exhibits 11 and  
15 12, what's depicted on this snippet?

16 A I believe this is the -- where the alleged suspect is returning.

17 Q Okay. Now, it says on here --

18 A Oh, sound, no sound.

19 Q I'm sorry. It says NN for?

20 A Oh, this is continuing of the interview.

21 Q Okay. So this is more of the interview?

22 A Yes. Sorry.

23 Q Okay.

24 A Yes, this is more of the interview with the victim.

25 Q Okay. And these have your initials?

1           A     Yes, they do.

2           Q     All right. And State's Proposed Exhibit No. 11, is that more  
3 of the interview with no sound?

4           A     Correct.

5           Q     And State's Proposed Exhibit No. 12 is more of the interview  
6 with sound?

7           A     Correct.

8                   MS. DIGIACOMO: Your Honor, at this time the State would  
9 move for admission of State's Proposed Exhibit 11 only, which is the one  
10 with no sound.

11                   THE COURT: And that's the one we discussed, apparently?

12                   MS. DIGIACOMO: Well, there's two.

13                   THE COURT: Okay. Counsel?

14                   MS. MACHNICH: Your Honor, nothing beyond what we  
15 discussed at the bench.

16                   THE COURT: Okay. I'm going to allow it conditioned on  
17 what we discussed.

18                             [Plaintiff's Exhibit 11 admitted into evidence]

19                   MS. DIGIACOMO: Thank you, Your Honor.

20                   All right. So the first one that I would like to publish, Your  
21 Honor, is the one cleaning the house. And this is State's Exhibit No. 8.

22                   THE COURT: Go ahead.

23 BY MS. DIGIACOMO:

24           Q     All right. Now, sir, you talked about when you first got there,  
25 you were met at the door by the victim and her mom?

1           A     Correct.

2           Q     And then you said the first thing you normally do is to clear  
3 the residence?

4           A     Correct.

5           Q     All right. So is that what you did in this case?

6           A     Yes, I did.

7           Q     Now, what's the point of doing that; what do you mean by  
8 clear the residence?

9           A     Clearing the residence, doing a protective sweep. While  
10 conducting our investigation we want to make sure no other people are  
11 inside the home that could potentially hurt us or caught us off -- catch us  
12 off guard. It's just to do with the safety sweep, making sure, like I said,  
13 nobody else is there so that we can conduct our interview.

14          Q     All right. And so do you just walk in and do the clearing of  
15 the residence or do you ask permission?

16          A     I ask permission.

17          Q     Okay. And were you given permission in this case?

18          A     Yes, I was.

19                MS. DIGIACOMO: And for the record, State's Exhibit No. 8  
20 should now be playing on the screen, maybe.

21                [Whereupon, a video recording, Plaintiff's Exhibit 8, was played in  
22 open court at 1:47 p.m.]

23 BY MS. DIGIACOMO:

24          Q     Okay. So this body cam, it shows you at the car. Is that your  
25 FTO that's on the other side?

1           A     Correct.

2           Q     All right. And it shows you walking down a couple of trailers  
3 to get to the one that you're going to?

4           A     Correct.

5           Q     Is this unit 254 that you're walking up to?

6           A     Yes, it is.

7           Q     And who is that?

8           A     That is the mother.

9           Q     Do remember her name?

10          A     I do not.

11          Q     And who is with her?

12          A     The one in the blue is her daughter.

13          Q     How big was this trailer?

14          A     The standardized mobile home, not very -- I mean ten feet by  
15 thirty feet.

16          Q     So what we call a single wide?

17          A     A single wide, yes.

18          Q     Okay. So at this point have you asked them what you're here  
19 for at all?

20          A     At this point I knew based on the information that was in our  
21 system why we were there and then I was asking permission to just  
22 make sure nobody else was inside the home.

23          Q     Okay. So you haven't started the interview yet?

24          A     No, I have not.

25          Q     Now, after you make sure that no one else is in the

1 residence, what happens at that point?

2 A After I make sure nobody else, I talk to the victim to get her  
3 information and then talk to her.

4 Q All right.

5 MS. DIGIACOMO: You can stop that.

6 [Video ends at 1:49 p.m.]

7 MS. DIGIACOMO: All right. So that's the end of that video.

8 BY MS. DIGIACOMO:

9 Q All right. When you first started speaking with Meily, the  
10 victim, what was her demeanor?

11 A When I first started speaking to her she was extremely  
12 fearful. She seemed embarrassed and terrified and distraught. And  
13 began to break down severely, shaking, crying, like I said embarrassed  
14 and in fear.

15 MS. MACHNICH: And, Your Honor, I'm going to object to  
16 speculation. We seem to go a little far here.

17 MS. DIGIACOMO: May we approach?

18 THE COURT: Yes.

19 MS. DIGIACOMO: Thank you.

20 [Sidebar begins at 1:50 p.m.]

21 MS. MACHNICH: Your Honor, we seem to be moving  
22 beyond what this officer could have observed. I mean he's getting very  
23 creative with his use of terminology and now he said [indiscernible]. I  
24 mean what does that look like?

25 MR. SPEED: He hasn't said a word to anyone. He can



1 surmise [indiscernible] all but 18 seconds that she was terrified, fearful,  
2 distraught.

3 MS. DIGIACOMO: I thought I asked what her demeanor was  
4 when he talked to her. And he summarizes the entire time that he  
5 interviewed her.

6 THE COURT: You certainly can cross him [indiscernible].  
7 You can ask him whether [indiscernible]. I mean it's progression or him  
8 [indiscernible] her progression. So I think it's an observation which I'm  
9 going to allow.

10 MS. MACHNICH: I just think he's going a little beyond  
11 observation to speculation with the extent to which he was describing  
12 those things. I mean it's --

13 THE COURT: Okay. I'm overruling it.

14 MS. MACHNICH: Okay.

15 [Sidebar ends at 1:51 p.m.]

16 THE COURT: The objection is overruled. Go on.

17 MS. DIGIACOMO: Thank you, Your Honor.

18 BY MS. DIGIACOMO:

19 Q Well, you said that at some point when you were talking with  
20 her that she broke down and started crying. Was that when you got into  
21 the reason why you were at that call?

22 A Yes, it was.

23 MS. DIGIACOMO: Your Honor, at this time the State is going  
24 to play State's Exhibit number 9.

25 THE COURT: Go ahead. That's admitted?

1 UNIDENTIFIED FEMALE SPEAKER: Yes, that was admitted.  
2 [Whereupon, a video recording, Plaintiff's Exhibit 9 was played in  
3 open court at 1:52 p.m.]

4 MS. DIGIACOMO: Okay. Pause it, please.

5 [Audio paused at 1:52 p.m.]

6 BY MS. DIGIACOMO:

7 Q Now, this snippet that we just played on State's Exhibit No. 9  
8 and was that -- did this begin when you first started asking Meily about  
9 why you were there?

10 A Can you rephrase that again? I'm sorry.

11 Q That was probably a bad question.

12 MS. DIGIACOMO: While we're here, can you go back to the  
13 beginning?

14 BY MS. DIGIACOMO:

15 Q Where this video starts of your body cam on State's Exhibit  
16 number 9 --

17 MS. DIGIACOMO: And if you could hit play?

18 [Audio resumed at 1:52 p.m.]

19 BY MS. DIGIACOMO:

20 Q Does this begin when you start questioning about the reason  
21 why you're there for the call?

22 A Yes, it does.

23 Q Okay. And when you said that when she started to talk about  
24 it, she broke down crying?

25 A Yes, at this point.

1 Q Can you let us know when you see that in the video?

2 A Right now.

3 Q Okay. As you talked to her, did she continue to cry?

4 A Yes. I visibly observed tears running down her face.

5 Q Okay.

6 [Video ends at 1:53 p.m.]

7 BY MS. DIGIACOMO:

8 Q Okay. Now I'd like to play State's Exhibit 11.

9 So that was when you initially talked to her. Was there a time that  
10 you stepped away from her and then started to talk to her again about  
11 why you were there?

12 A Yes.

13 Q And when you stepped away from her, what was the  
14 purpose of that?

15 A I was discussing with my partner as far as what to do, as far  
16 as of the questions that needed to be answered to investigate what we  
17 were there for.

18 Q Okay. Now, just generally what kind of call was this?

19 A This is a child molest call.

20 Q Okay. So when you say your partner, are you talking about  
21 your FTO or are you talking about the other training officer that arrived?

22 A The other training officer.

23 Q Right. And who was that?

24 A Officer Larson.

25 Q Okay. And so after speaking with him did you then go back

1 and interview her again some more?

2 A Correct.

3 Q Okay. And did her demeanor change when you were talking  
4 to her or did she still seem upset or fearful and crying?

5 A She was still crying and fearful.

6 Q Okay.

7 MS. DIGIACOMO: And I'd ask to play 11 now, State's Exhibit  
8 11.

9 [Whereupon, an audio recording, Plaintiff's Exhibit 11 was played  
10 in open court at 1:54 p.m.]

11 BY MS. DIGIACOMO:

12 Q Does she still appear at this point to be crying?

13 A Yes.

14 Q And how do you know?

15 A Like this is also when I observed tears running down her  
16 face.

17 Q And can you see them on your body cam, as well?

18 A Yes, I can.

19 Q When you're doing those kind of interview are you trying to  
20 get in-depth and all the facts?

21 A No.

22 Q What are you trying to accomplish?

23 A I'm trying to get the preliminary investigation of -- with it  
24 being this type of call, a juvenile involved, it's you have to ask the basic  
25 questions as to what occurred. And with those basic informations then I

1 can contact detectives so that they can give me more advice or the  
2 experts in that area.

3 Q Okay. And you're still interviewing her at this point?

4 A Yes, I am.

5 Q When you communicated with her, did you speak to her in  
6 English or Spanish?

7 A English.

8 [Audio ended at 1:59 p.m.]

9 BY MS. DIGIACOMO:

10 Q All right. Now, after speaking with her, did you determine  
11 that additional steps needed to be taken or that detectives needed to be  
12 called?

13 A Yes, I did.

14 Q What detectives did you call?

15 A I called the sexual assault detectives.

16 Q Did you actually speak with a detective?

17 A Yes, I did.

18 Q Do you remember who that was?

19 A Detective Huth, I believe it was.

20 Q Okay. Did she give you direction on what to do next?

21 A Yes, she did.

22 Q What did she tell you to do?

23 A She told me --

24 MS. MACHNICH: Objection. Hearsay.

25 MS. DIGIACOMO: And it's just to show what he did next, not

1 for the truth of the matter.

2 THE COURT: Well, I'm going to sustain the objection. It's  
3 hearsay and you can ask him what he did next.

4 MS. DIGIACOMO: Okay.

5 BY MS. DIGIACOMO:

6 Q Based upon speaking with Detective Huth, what did you do  
7 next?

8 A Based on her advisement I took the -- informed the mother  
9 and the daughter that they were going to go to the office where the  
10 detective was so that they can interview her there.

11 Q Okay. And it's not headquarters office, correct?

12 A No, it's not.

13 Q Is it the Southern Nevada Children's Assessment Center?

14 A Yes, it is.

15 Q When you're there and you had interview Meily, did you ever  
16 try and get information about where the person, I guess, who did this  
17 was?

18 A Yes.

19 Q And who did you try and get that information from?

20 A From the victim.

21 Q Did you speak to the mom at all?

22 A No.

23 Q And why not?

24 A She did not speak English.

25 Q Okay. What information did you obtain regarding either

1 what he looked like, what kind of car, when he's expected home?

2 A The victim showed me on her phone what the father looked  
3 like and the vehicle he was driving and told me that he was at work with  
4 the son and that they would be back very shortly upon our arrival.

5 Q Okay. So when you learned that information, did you do  
6 something with your cars?

7 A Yes, we did.

8 Q What did you do?

9 A Based on the information that I received from the victim and  
10 that the suspect was due to return prior to us leaving, we moved our  
11 vehicles further west in the complex to not basically tip off as to why we  
12 were at that location.

13 Q All right. Now, I'm showing you back State's Exhibit No. 1  
14 again.

15 [Parties confer]

16 BY MS. DIGIACOMO:

17 Q Okay. So let me zoom in. Okay.

18 [Whereupon, a diagram, Plaintiff's Exhibit 1 was put on the screen  
19 in open court at 2:01 p.m.]

20 BY MS. DIGIACOMO:

21 Q So on here you see where number 254 is?

22 A Yes. Where your pen is.

23 Q All right. Now, when you -- let me zoom in a little bit. When  
24 you first arrived, where were your patrol vehicles?

25 A I believe I was on the 256.

1 Q Okay. So one over from the mobile home that you were  
2 going to?

3 A Yes.

4 Q Okay. And so where did you move your police vehicles to?

5 A We moved our vehicle cars all the way down to the end of  
6 Pine located at 245 down left.

7 Q Down here?

8 A Down here.

9 Q Oh, so you were parked right next to 245?

10 A Yes. We relocated them over there.

11 Q Okay. While you're out on the street, you said that you were  
12 going to take Meily, her mom, to the Children's Assessment Center?

13 A Correct.

14 Q Were you going to drive them in your car or were they  
15 driving in their own?

16 A They were going to drive their car and we would direct them.

17 Q Okay. So were you out at the street waiting for them to get  
18 packed up?

19 A Yes.

20 Q And what happened when you were out on the street?

21 A While waiting for them to pack up their things I observed the  
22 same truck that the victim showed me of what the father was driving pull  
23 into the neighborhood, the corner we see there on Pine Drive.

24 Q So up here?

25 A Yes. Where 204 is around the corner.



1 Q Yes.

2 THE COURT: There's a mouse there that you can --

3 THE WITNESS: Thank you. It might be dead.

4 [Parties confer]

5 MS. DIGIACOMO: And for the record he's stepping down  
6 with a pointer with the screen.

7 THE COURT: Okay.

8 THE WITNESS: Can you ask the question again?

9 BY MS. DIGIACOMO:

10 Q So I was asking you -- you said that your car was located, the  
11 two police vehicles, were originally located at 256; you said?

12 A Yes. Approximately about right here.

13 Q So you're pointing directly to the street in front of 256?

14 A Correct. Pine Drive.

15 Q On Pine Drive.

16 A Yes.

17 Q And then you moved your cars down to 245 Pine Drive?

18 A Yes. It would be to the west, so we moved our vehicles  
19 down here to prevent, like I said, the tipping off of the suspect who was  
20 due to arrive, like I said, prior to our -- prior to us leaving.

21 Q Okay.

22 A So we move our vehicles down there.

23 Q Okay. Now, when you moved your vehicles down there, did  
24 you stay with your vehicles or did you kind of walk back up the street?

25 A I left my vehicle down here and then I walked back up to the

1 victim's house.

2 Q All right. When you're up there at the victim's house, did you  
3 go back inside, or did you stay outside where you were waiting for  
4 them?

5 A I stood by outside while they were gathering their  
6 belongings.

7 Q And you're pointing to your basically right on the corner of  
8 their property and on the street?

9 A Correct.

10 Q And what happened? You said you observed a blue truck  
11 that was the same as in the photograph you were shown?

12 A Correct. While standing on Pine Drive in front of the target  
13 residence, I observed the same blue truck as the victim showed me on  
14 her phone around the corner.

15 Q So it came from Elm Drive, drove past 203 and 204?

16 A Correct.

17 Q And turned onto Pine Drive?

18 A Correct. And at this time the truck rounded the corner right  
19 here and stopped and at that time I made visual contact with the vehicle  
20 and with my partner, as well, and the vehicle, what appeared to be --  
21 recognize us, made a U-turn and exited the Pine Drive.

22 Q When you saw the vehicle turn around and exit, what did you  
23 do?

24 A At that time me and my partners ran to our vehicles and got  
25 in our cars, identifying the same truck as the picture in the phone from

1 the victim, and attempted to get behind it to initiate a stop.

2 Q All right. Did you actually initiate a stop?

3 A Yes, we did.

4 Q Okay. You can sit down now. And that was at the entrance  
5 of the park?

6 A Yes.

7 Q Was there more than one person in the vehicle?

8 A Yes, there was.

9 Q All right. How many people were in the vehicle?

10 A There was two people in the vehicle.

11 MS. DIGIACOMO: Your Honor, may I approach?

12 THE COURT: Yes.

13 BY MS. DIGIACOMO:

14 Q All right. Now I'm going to show you what's been marked  
15 for identification as State's Proposed Exhibit No. 4. Do you recognize  
16 who's depicted in this photograph?

17 A Yes, I do.

18 Q And who is this?

19 A This is the brother or the son.

20 Q Okay. Is this Jose?

21 A Yes, it is.

22 Q All right. And is he standing with a police car in the  
23 background?

24 A Yes, he is.

25 Q Okay. So is this at the location where the truck was stopped?

1 A Correct.

2 Q Okay. And this fairly and accurately depicts how he looked  
3 when the truck was stopped, and he came out of it?

4 A Yes, it does.

5 Q Back on July 12 of 2016?

6 A Yes.

7 MS. DIGIACOMO: Your Honor, I move for admission to  
8 State's Proposed Exhibit No. 4.

9 THE COURT: Any objection?

10 MS. MACHNICH: We have no objection, Your Honor.

11 THE COURT: It may be admitted.

12 [Plaintiff's Exhibit 4 admitted into evidence]

13 MS. DIGIACOMO: Move to publish.

14 THE COURT: Go ahead.

15 MS. DIGIACOMO: Thank you. And just for the record I've  
16 got to zoom out.

17 BY MS. DIGIACOMO:

18 Q Okay. And so this is Jose?

19 A Correct.

20 Q And this was the brother of Meily?

21 A Correct.

22 Q Okay. Now, the other person that was in the vehicle that day,  
23 was that person driving?

24 A Yes.

25 Q All right. Do you see them in the courtroom here today?

1           A     Yes, I do.

2           Q     Would you point to the person you're referring to and  
3 describe an article of clothing that they're currently wearing.

4           A     The Defendant gentleman in the pink shirt sitting down at the  
5 end of the table.

6                   MS. DIGIACOMO: Your Honor, would the record reflect  
7 identification of the Defendant?

8                   THE COURT: It will so reflect.

9 BY MS. DIGIACOMO:

10          Q     When you went to catch up with the vehicle, you said that  
11 you initiated a stop. What does that mean specifically?

12          A     So having known that the vehicle was associated to the  
13 father at the time and the vehicle taking an immediate U-turn out of the  
14 complex, with that information I had reason to believe that that was the  
15 father and conducted a vehicle stop meaning I'll activate my lights and  
16 emergency lights and sirens in a marked patrol vehicle, informing that  
17 that -- informing the driver that we are said police, marked uniform,  
18 lights and sirens, and law enforcement entity.

19          Q     Okay. When you initiated the lights and sirens on this blue  
20 truck, did the truck pull over?

21          A     It stopped.

22          Q     Okay. And was the Defendant you identified cooperative?

23          A     Yes.

24          Q     Okay. Came out of the truck, no issues?

25          A     Correct.

1 Q And then at that time did you cuff him and place him in one  
2 of your patrol vehicles?

3 A Yes, I did.

4 Q And was he later turned over to detectives?

5 A Yes, he was.

6 Q Once he's now in custody, do you go back to where Meily  
7 and her mom are?

8 A I don't recall.

9 Q Okay. Do you recall seeing them after you had him in  
10 custody?

11 A Yes, I do.

12 Q And what do you recall about the demeanor after he was in  
13 custody?

14 A I remember that the victim, Meily, and the mother were  
15 extremely fearful even though the father was in custody. Meily kept  
16 asking me if he was going to be released --

17 Q Okay.

18 A -- and was extremely terrified that he was going to be  
19 released.

20 Q Okay. What about the mom; was she also fearful?

21 A She was also in fear.

22 Q Now, initially you said that you were in the process of taking  
23 them down to the Children's Assessment Center when the Defendant  
24 came home. Did you, after getting him into custody, take them all down  
25 to the Children's Assessment Center?

1 A Yes.

2 Q And then did you kind of hand everyone over to Detective  
3 Huth?

4 A Yes, I did.

5 Q Did you actually write a report in this case?

6 A Yes, I did.

7 MS. DIGIACOMO: The Court's indulgence. I'll pass the  
8 witness.

9 THE COURT: Cross?

10 MS. MACHNICH: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MACHNICH:

13 Q Good afternoon, Officer.

14 A Good afternoon.

15 Q All right.

16 MS. MACHNICH: Your Honor, may I proceed?

17 THE COURT: Go ahead.

18 MS. MACHNICH: Thank you.

19 BY MS. MACHNICH:

20 Q So, officer, you were among the first officers to respond to  
21 the home of Meily Moran on July 12, 2015?

22 A Correct.

23 Q Okay. And you weren't ultimately the one in charge of this  
24 case, correct?

25 A It was -- I believe I was the primary officer.

1 Q But ultimately a detective came onto the case and made  
2 decisions?

3 A They were notified, yes, and then took over the case.

4 Q Right. And it was assigned to Detective Huth. And she --  
5 correct?

6 A Yes.

7 Q -- made decisions based upon who was interviewed and  
8 whatever evidence was ultimately collected?

9 MS. DIGIACOMO: Objection, Your Honor. It calls for  
10 speculation of what another detective did.

11 THE COURT: As far as he knows, I'll allow it.

12 BY MS. MACHNICH:

13 Q You may answer.

14 A Yes, it was.

15 Q So Detective Huth was making the decisions?

16 A After the preliminary investigation was conducted.

17 Q Yes.

18 A Correct.

19 Q Thank you. Now, you didn't conduct any formal forensic  
20 interview in this case, correct?

21 A Correct.

22 Q Okay. You just did the initial interview of Meily and to a  
23 lesser extent, her mom?

24 A Yes.

25 Q Okay. Because you were exchanging some words with her



1 mother, but it was through Meily's own interpretation?

2 A Yes.

3 Q All right. Now, as you covered with the State, you were  
4 wearing body cams during this time?

5 A Yes, I was.

6 Q All right. And the body cam that you were shown by the  
7 State of Nevada, that was not continuous footage of the entire time you  
8 were there, it was snippets of the footage?

9 A Correct.

10 Q Okay. Fair to say that you had never met Meily Moran before  
11 this date?

12 A Correct.

13 Q You didn't personally know her?

14 A No, I did not.

15 Q Okay. So you have no personal knowledge of how she  
16 responds to any particular situation?

17 A No, I do not.

18 Q Okay. You don't know how she responds when she's happy?

19 A No.

20 Q How she responds when she's sad?

21 A No.

22 Q How she responds when she's scared?

23 A No.

24 Q Or if she's just being dramatic?

25 A I do not.

1 Q All right. Because you don't have personal knowledge of  
2 her?

3 A Correct.

4 Q All right. You just have what you observed during your  
5 interview and interactions with her?

6 A Correct.

7 Q All right. Now, forwarding a little bit to the last thing you  
8 discussed with the State when Gustavo arrived back at his home, you  
9 said that you saw the truck approach the residence?

10 A Correct.

11 Q And then you saw it making a U-turn and continue back the  
12 direction it had came?

13 A Correct.

14 Q At that point you went to your patrol vehicle, which was  
15 several spots down?

16 A Correct.

17 Q And you got in and you followed the truck?

18 A Correct.

19 Q All right. And you activated lights and sirens to stop the  
20 truck?

21 A Correct.

22 Q And at that point the truck immediately stopped?

23 A It progressed a little forward and then came to a stop.

24 Q Okay. It didn't initiate a high speed chase down the road?

25 A Correct.

1 Q Okay. And at that point you said that the individuals in the  
2 vehicle exited without issue?

3 A Correct.

4 Q All right. And is it clear to say that the -- or fair to say that  
5 the truck never exited the complex all the way?

6 A Correct.

7 Q Okay. So the actual -- when you caught up to the truck, it  
8 was still within that complex we've been seeing, the Miracle Mile  
9 complex?

10 A Correct.

11 Q Okay.

12 MS. MACHNICH: Court's brief indulgence. Your Honor, may  
13 we approach?

14 THE COURT: Yes.

15 MS. MACHNICH: Thank you.

16 [Sidebar begins at 2:15 p.m.]

17 MS. MACHNICH: Your Honor, I have some questions for this  
18 witness on things that he was told by Meily that contradict what the  
19 State has said in their opening, but --

20 THE COURT: Pardon me?

21 MS. MACHNICH: That he was told by the alleged victim that  
22 contradict what the State has said in their opening, but obviously she  
23 has not testified. I can either cross on those now or reserve the right to  
24 recall him later and he can stay under subpoena for the rest of the week.

25 MS. DIGIACOMO: He's going to stay under subpoena

1 anyway.

2 MS. MACHNICH: Okay. So as long as he's instructed by the  
3 Court to be available for the remainder of this week to be recalled, I think  
4 we have no more questions. All right, thank you.

5 [Sidebar ends at 2:15 p.m.]

6 THE COURT: No questions, then --

7 MS. MACHNICH: And, Your Honor, subject to our discussion  
8 at the bench, we have no further questions.

9 THE COURT: Yes. It's all --

10 MS. MACHNICH: Thank you, officer.

11 THE WITNESS: Thank you.

12 MS. DIGIACOMO: The State has nothing.

13 THE COURT: Redirect? No?

14 MS. DIGIACOMO: No.

15 THE COURT: Questions from the jury? Raise your hand if  
16 you have any questions. Thank you, you may step down.

17 THE WITNESS: Thank you.

18 MS. MACHNICH: And, Your Honor, may we instruct the  
19 witness to remain under subpoena and remain in the jurisdiction and  
20 available for the rest of the trial duration.

21 THE COURT: He understands.

22 THE WITNESS: I do.

23 MS. MACHNICH: Thank you.

24 THE COURT: Call your next witness.

25 MS. DIGIACOMO: Your Honor, the State calls Meily Moran.

1 THE COURT: Does anybody need a break? Raise your hand.

2 [Parties confer]

3 THE COURT: All right, then, we'll take a -- we're going to  
4 take a short recess. All right, we're going to take ten minutes.

5 During this recess you're admonished do not talk or converse  
6 amongst yourselves or with anyone else on any subject connected with  
7 this trial or read, watch, or listen to any report of or commentary on the  
8 trial or any person connected with this trial by any medium of  
9 information, including without limitation, newspapers, television, radio,  
10 or internet. Do not form or express any opinion on any subject  
11 connected with the trial until the case is finally submitted to you.

12 We'll take ten minutes.

13 [Jury out at 2:18 p.m.]

14 THE COURT: Folks, we'll be back at 2:30.

15 [Recess at 2:18 p.m., recommencing at 2:31 p.m.]

16 [Outside the presence of the jury]

17 THE MARSHAL: -- 28 is again in session.

18 THE COURT: Anything outside the presence?

19 MS. DIGIACOMO: Yes, Your Honor.

20 With regard to Meily, the victim, she intends to testify in  
21 English. Three years later her English is a little better than it was at  
22 prelim, I guess. However, she wants an interpreter on standby, but just  
23 in case there's some word she doesn't know how to interpret.

24 THE COURT: Okay.

25 MS. DIGIACOMO: Or understand.

1 THE COURT: Do you want me to explain that?  
2 MS. DIGIACOMO: No, no. I'll say that in front of the jury --  
3 THE COURT: Okay.  
4 MS. DIGIACOMO: -- I just didn't -- I didn't know if the  
5 Defense would take issue, so I'm just bringing it up.  
6 MS. MACHNICH: We would actually very much like the idea  
7 that if she doesn't understand something we start using an interpreter,  
8 because we don't want any miscommunication.  
9 THE COURT: All right.  
10 MS. DIGIACOMO: I guess --  
11 THE COURT: Anything else? Defense?  
12 MS. MACHNICH: Is the interpreter going to stay back here  
13 until she's needed?  
14 MS. DIGIACOMO: No, she'll just sit, sit behind her until she  
15 -- if she turns to her, than she would interpret otherwise, she'll just sit  
16 there quietly.  
17 MS. MACHNICH: Okay.  
18 And, Your Honor, at some point we may point on the record  
19 when she's using the interpreter, versus when she's not?  
20 THE COURT: Oh, absolutely, that's fine.  
21 MS. MACHNICH: Thank you.  
22 THE COURT: Ready to go?  
23 MS. DIGIACOMO: Yeah.  
24 MS. MACHNICH: Yes.  
25 THE COURT: Well, we don't have Steve, so --

1 THE MARSHAL: Are you ready?  
2 THE COURT: Bring them in.  
3 THE MARSHAL: Please rise for the jury.  
4 [Jury in at 2:32 p.m.]  
5 [Inside the presence of the jury]  
6 THE COURT: Please be seated.  
7 Do the parties acknowledge presence of the jury?  
8 MS. DIGIACOMO: Yes, Your Honor.  
9 MR. SPEED: Yes, Your Honor.  
10 THE COURT: So because, you know, we had 85 people it  
11 was really hot, we turned the air down. I don't know about the rest of  
12 you I was cold just now, so we're hopefully adjusting it, because we  
13 don't have a packed courtroom.  
14 Okay, State.  
15 MS. DIGIACOMO: Thank you, Your Honor. The State calls  
16 Meily Moran.  
17 THE MARSHAL: Watch your step. Remain standing. You'll  
18 face the clerk of the court.  
19 THE CLERK: Please raise your right hand.  
20 MEILY MORAN, STATE'S WITNESS, SWORN  
21 [Witness testifies with assistance of interpreter if required]  
22 THE CLERK: Please be seated. Please state your name and  
23 spell it for the record.  
24 THE WITNESS: Meily Moran, M-E-I-L-Y M-O-R-A-N.  
25 MS. DIGIACOMO: May I?

1 THE COURT: Go ahead.

2 DIRECT EXAMINATION

3 BY MS. DIGIACOMO:

4 Q Meily, how old are you?

5 A I'm 16 years old.

6 Q When is your birthday?

7 A December 5th, 2002.

8 Q Okay. Now you have three brothers?

9 A Yes.

10 Q Okay. And were they all living with you back in -- between  
11 2014 and 2016?

12 A Yes.

13 Q Okay. Who was your oldest brother that you lived with?

14 A My oldest brother, would be Jose Juan Moran.

15 Q Okay, slowly. Jose Juan Moran?

16 A Yes.

17 Q Okay. And how old is he?

18 A He's 15.

19 Q Do you know when his birthday is?

20 A January 5th, 2004.

21 Q Okay. So he's roughly two years behind you, or two years  
22 younger than you?

23 A Yes.

24 Q And what other brothers do you have?

25 A Adonay Gustavo -- I mean, Adonay Octabio, and Gustavo



1 Adonay.

2 Q Okay. The first one, Adonay?

3 A Adonay.

4 Q Okay. How do you spell that?

5 A A-D-O-N-A-Y.

6 Q And the middle name, you said Octabio?

7 A Octabio.

8 Q Octabio. Okay.

9 A O-C-T-A-B-I-O.

10 Q And when was he born?

11 A He was born on 2014.

12 Q In 2014?

13 A Yes.

14 Q Okay. And what about your younger one?

15 A Gustavo?

16 Q Yes.

17 A He was born on 2016.

18 Q Okay. Do you know the exact date of his birthday?

19 A February 22nd.

20 Q Of 2016?

21 A Yes.

22 Q Do you know the exact birthday for Adonay?

23 A October 2nd.

24 Q Of 2014?

25 A Yes.

1 Q Okay. Now did you also live with you mom at the time?

2 A Yes.

3 Q And what is your mom's name?

4 A Meili Castillas Ortiz.

5 Q Okay. How do you spell Meili?

6 A M-E-I-L-I.

7 Q All right. Does she say [Mei-li] or Mi-ly?

8 A [Mei'li].

9 Q Meili, okay. And how do you spell her last name?

10 A Ortiz, O-R-T-I-Z.

11 Q Okay. Now back between 2014 and 2016 did somebody else

12 also live in your home?

13 A Yes.

14 Q Okay. and who is that?

15 A Gustavo Adonay Gunera-Pastrana.

16 Q Okay. Do you see him in the courtroom here today?

17 A Yes.

18 Q Okay. I'm going to ask you to point to who you're referring

19 to, and describe what he's wearing, so that everybody in here knows

20 who you are talking about.

21 A Over there. He's wearing a pink shirt and black pants.

22 MS. DIGIACOMO: Your Honor, would the reflect

23 identification of the Defendant.

24 THE COURT: It will so reflect.

25 MS. DIGIACOMO: Thank you.

1 BY MS. DIGIACOMO:

2 Q Now you and your oldest brother, Jose, you have the same  
3 last name?

4 A Yes.

5 Q Do you have the same parents?

6 A Yes.

7 Q Okay. Now what about your two younger brothers, Adonay  
8 and Gustavo, who are their parents?

9 A Meili Castillas Ortiz and Gustavo Gunera-Pastrana.

10 Q Okay. So is it fair to say that they're your half-brothers?

11 A Yes.

12 Q Okay. Do you remember how old you were when you met  
13 the Defendant, Gustavo?

14 A I believe I was 11 years old.

15 Q When you met him was your mom pregnant with Adonay, or  
16 no?

17 A I don't know.

18 Q Okay. What about when you first met him, did you -- well,  
19 strike that.

20 At some point did he move in with your family, or did you  
21 move in with him?

22 A He moved in with us.

23 Q Okay. When was it that he moved in, if you remember?

24 A I believe it was 2014.

25 Q Okay. Do you know if your mom was pregnant with Adonay,

1 when he moved in?

2 A Yes, she was.

3 Q When he first moved in what did you call Gustavo?

4 A At first I called him by his name.

5 Q Okay. And did it change after that?

6 A And then as time went by I asked if I -- if I could call him  
7 "Dad" and he agreed.

8 Q So then did you call him dad?

9 A Yes.

10 Q At some point did you stop calling him dad?

11 A Yes.

12 Q When was that?

13 A 2015.

14 Q Okay. What happened in 2015, when you stopped calling  
15 him dad?

16 A He -- he hurt me.

17 Q Okay. Well, let's not talk about that right now. Let's talk  
18 about your biological dad; do you know him?

19 A No.

20 Q Does Jose know him?

21 A No.

22 Q When was the last time that you've seen him, or do you  
23 know?

24 A I don't remember.

25 Q Okay. So you were too little?

1 A Yes.

2 Q Okay. So when Gustavo first moved in and you said you had  
3 asked him if you could call him dad, did you like him?

4 A Yes. He was a nice person.

5 Q Okay. At some point did that change?

6 A Yes.

7 Q When was that?

8 A 2015.

9 Q Okay. Was that because he hurt you?

10 A Yes.

11 Q In 2015, do you remember when it was, during that year, that  
12 he hurt you first?

13 A August 2015.

14 Q August of 2015?

15 A Yes.

16 Q Okay.

17 MS. DIGIACOMO: Your Honor, may I approach?

18 THE COURT: Yes.

19 BY MS. DIGIACOMO:

20 Q All right. Now earlier in 2015 did something medically  
21 happen to you?

22 A Yes.

23 Q Okay. What happened?

24 A I had surgery.

25 Q Okay. And where did you have that surgery? Was it at a

1 hospital?

2 A Yes. At a hospital.

3 Q Do you remember the name of the hospital?

4 A Sunrise Children's Hospital.

5 Q And what was wrong that you had to have surgery?

6 A One of my ovaries was twisted.

7 Q Okay. Did they remove your ovary?

8 A Yes.

9 Q Okay. Do you recall what kind of incision you got for that  
10 surgery, and where they were on your body?

11 A I got scars under my belly button.

12 Q Okay. How many scars?

13 A Three.

14 Q And you still have them today?

15 A They're barely visible.

16 Q In 2015 did it take a while for those wounds to heal?

17 A Yes.

18 MS. DIGIACOMO: And, Your Honor, I have here what's been  
19 marked for identification as State's proposed Exhibit 6. These are her  
20 medical records from Sunrise Hospital regarding this surgery, and the  
21 Defense has stipulated that I can introduce them without a custodian of  
22 records, so at this time I would move for admission of State's proposed  
23 Exhibit Number 6.

24 THE COURT: Do you have any objection.

25 MS. MACHNICH: We have no objection.

1 THE COURT: They'll be admitted.

2 [State's Exhibit 6 admitted into evidence]

3 MS. DIGIACOMO: Thank you.

4 BY MS. DIGIACOMO:

5 Q All right. So in August of 2015 do you remember what day of  
6 the week it was, or what time of the month were you in school, not in  
7 school?

8 A It was a Sunday.

9 Q A Sunday in August?

10 A Yes.

11 Q And who was -- well, first of all, where did this happen?

12 A In a mobile home.

13 Q Okay. Was it the mobile home that you were residing in, in  
14 July of 2016, when the police were called?

15 A No.

16 Q It was a different mobile home?

17 A Yes.

18 Q Between 2015, the summer of 2015 and the summer of 2016,  
19 how many different places did you live in?

20 A Can you repeat the question again?

21 Q Sure. Between August of 2015, until the police were called in  
22 July of 2016, how many different places did you live with your family?

23 A Three.

24 Q Okay. So in August of 2015 you said you were living in a  
25 mobile home?

1 A Yes.

2 Q Do you know where that was located?

3 A Bonanza. I don't think I remember.

4 Q So it was in Las Vegas?

5 A Yes.

6 Q Was it in Clark County, Nevada?

7 A Yes.

8 Q Okay. And then how long did you live there?

9 A Until -- I don't really remember.

10 Q Okay. In August of 2015, what grade were you going into in

11 school for that year?

12 A Eighth grade.

13 Q Okay. Did you move? I know you don't remember when

14 you moved, where did you move to from that mobile home you lived in,

15 in August of 2015?

16 A We moved to an apartment.

17 Q And where is that apartment located?

18 A Here in Las Vegas.

19 Q Okay. In Clark County, Nevada?

20 A Yes.

21 Q Okay. Do you remember the cross streets or the side of town

22 it was?

23 A Not really.

24 Q Okay. And then at some point did you move to the mobile

25 home where you were living, in July of 2016?



1 A Yes.

2 Q Okay. And that's also in Clark County, Nevada?

3 A Yes.

4 Q So on this Sunday, in August of 2015, you said the Defendant

5 hurt you?

6 A Yes.

7 Q What do you mean by that?

8 A He touched me without my consent.

9 Q Okay. So let's go back. How did it start?

10 A He --

11 Q Well, actually, let's go back further. I'm sorry to interrupt

12 you. You said it occurred at the mobile home?

13 A Yes.

14 Q Who was home?

15 A It was me, my second youngest brother.

16 Q So your baby brother?

17 A Yes. My brother Adonay, who was one, and Gustavo.

18 Q Okay. Where was your mom?

19 A My mom was at work.

20 Q Okay. And where was Jose when this happened?

21 A In his room.

22 Q Okay. Where did it happen in the mobile home?

23 A In the living room.

24 Q Okay. And what were you doing right before this happened?

25 A I was cleaning the house.

1 Q Okay. And what did you when you were done cleaning the  
2 house?  
3 A I sat on the couch to watch TV.  
4 Q Who else was on the couch watching TV?  
5 A Gustavo.  
6 Q Okay. And where was your baby brother?  
7 A He was asleep.  
8 Q In the --  
9 A Master bedroom.  
10 Q In the master bedroom. And at that time was little Gustavo  
11 born yet?  
12 A No.  
13 Q Okay. So there was just one baby brother?  
14 A Yes.  
15 Q Was your mom pregnant at the time?  
16 A I don't know.  
17 Q Okay. So you sit down to watch some TV. Do you  
18 remember in August if school had started yet?  
19 A Not yet.  
20 Q Okay. So it was still summer vacation?  
21 A Yes.  
22 Q And what happened when you sat and watched TV?  
23 A Gustavo asked me to sit on his lap.  
24 Q Okay. Did you think anything of that?  
25 A No, I obeyed.

1 Q And when you sat on lap what happened next?  
2 A He started touching me.  
3 Q Well, where did he start touching you?  
4 A My stomach area.  
5 Q Did he tell you why he was touching your stomach area?  
6 A No.  
7 Q Do you remember speaking to somebody in July of 2016,  
8 where you said he was going to check your surgery?  
9 A Yes.  
10 Q Okay. Is that what he said?  
11 A That was after.  
12 Q Okay, I'm sorry. So when you first sit on his lap he's  
13 touching your stomach?  
14 A Yes.  
15 Q Is it over your clothes, or under my clothes?  
16 A Under my clothes.  
17 Q Okay. And then he said something?  
18 A Yes.  
19 Q And what did he said?  
20 A He said, if I liked -- I liked the way he touched me.  
21 Q Okay. And what did you say?  
22 A I responded, "No."  
23 Q And what happened at that point?  
24 A He then told me to get up, because he was going to check my  
25 scars.

1 Q Okay. And did he check your scars?

2 A He did.

3 Q Where -- you said that your scars were underneath your belly  
4 button?

5 A Yes.

6 Q Were they all in a row under your belly button, or were they  
7 across your abdomen?

8 A One of them is in the right, the other one is in the left, and  
9 one is in the middle.

10 Q Okay. So he checked your scars?

11 A Yes.

12 Q And how did he check them?

13 A Normally he'd just lower my clothes, and he just touched  
14 them and told me they were fine.

15 Q Okay. That's normally. What happened on this day in  
16 August of 2015?

17 A He did the same, but that was after he touched  
18 inappropriately.

19 Q He touched you what?

20 A Inappropriately.

21 Q Oh, inappropriately?

22 A Yes.

23 Q Okay. Do you remember what you were wearing that day?

24 A I was wearing some khaki long shorts, I don't even know  
25 what they were, and a green spaghetti shirt.

1 Q Okay. When you say "spaghetti" you mean like the straps  
2 were spaghetti straps?

3 A Yes.

4 Q Okay. So you said that he touched your scars, initially?

5 A Yes.

6 Q And then you said he touched you inappropriately?

7 A Yes.

8 Q Did he touch you with his hand, inappropriately?

9 A Yes.

10 Q What did he do with his hand?

11 A He moved it around my stomach area, and then he went  
12 further down.

13 Q Okay. Did he go further down inside your clothes, or outside  
14 your clothes?

15 A Well, inside my pants, what I was wearing.

16 Q Okay. Was it over your underwear, or under your  
17 underwear?

18 A Over my underwear.

19 Q Okay. So he goes inside your pants, over your underwear?

20 A Yes.

21 Q What does he touch?

22 A He touches my private area.

23 Q Okay. Now "private area" means a lot of things to different  
24 people. When you say "private area" do you know another name for it?

25 A My vagina.

1 Q Okay. And he touched your vagina over your underwear?

2 A Yes.

3 Q Okay. Was it on the outside of your vagina only, or did his

4 hand go on the inside?

5 A The outside.

6 Q Was his hand touching like this, or did it move, or did it stay?

7 A It was like wiping a table.

8 Q Okay. So he had his hand -- was it an open hand, or closed?

9 A It was open.

10 Q Opened hand, and he's touching your private part of your

11 vagina, and he's moving it like he's wiping a table?

12 A Yes.

13 Q So like a circular motion?

14 A Yes.

15 Q What did you do when he did this?

16 A I told him, "What are you doing?" And he told me, "Nothing."

17 I told him to stop, and then he asked me, "You don't like it," and I told

18 him, "No, it's wrong."

19 Q And then what happened?

20 A And then he just stopped doing it. I got up and he told me to

21 go and keep doing my chores.

22 Q Okay. So did you keep doing your chores?

23 A Yes.

24 Q Was there any further conversation that day about it?

25 A He had asked me if I will like it if he -- if I will like it, if he went

1 to jail.

2 Q Okay. What did you say to that?

3 A I was confused, and I asked him, "Why are you asking me  
4 that?" And he didn't say anything after that.

5 Q Okay. And was that the end of it?

6 A Yes.

7 Q Did you tell anyone, after that happened that day?

8 A No.

9 Q And why not?

10 A I felt embarrassed, and I don't really know why I didn't tell  
11 him -- tell anyone.

12 Q Okay. Was it after this day that you stopped calling him dad?

13 A Yes.

14 Q And how did you feel to be around him after that?

15 A I felt uncomfortable.

16 Q Now around that time was there a time that you were driving  
17 in the car with him and you talked about what happened?

18 A Yes.

19 Q Okay. Tell us about that. When was it in relation to this  
20 Sunday in August of 2015?

21 A Can you repeat that again?

22 Q Sure, sorry. When you had the conversation in the car, had  
23 school started yet? Were you in eighth grade yet, or was it still summer  
24 vacation?

25 A I don't remember.

1 Q Okay. But it was shortly after this happened in August?

2 A Yes.

3 Q Okay. And you're driving in the car?

4 A Yes.

5 Q And what happened?

6 A I brought up the subject. I asked him, "Why do you touch me  
7 that day?" And he told me that it was my punishment.

8 Q And what did you say to that?

9 A I asked him, "Punishment of what?" And he told me because  
10 I was wearing those clothes that day.

11 Q Okay. Did you know he didn't like the clothes you were  
12 wearing that day?

13 A No.

14 Q Did you say anything else to him?

15 A I told him, "That's not a good reason to be doing that to me."  
16 He told me that it was the consequences for me not obeying him.

17 Q Okay. Now did he ever, after that time, when you discussed  
18 it in the car, did he ever ask to see your scars again?

19 A No.

20 Q Did you ever tell anybody during your eighth grade school  
21 year what happened?

22 A My brother.

23 Q Okay. Which brother?

24 A Jose Juan.

25 Q Do you remember when you told Jose Juan?



1 A It was after school.

2 Q After school one day?

3 A Yes.

4 Q Do you remember if it was in the first semester or the second  
5 semester?

6 A It was already like May, like summer-ish.

7 Q Okay. So towards the end of the school year?

8 A Yeah.

9 Q And why did you tell him?

10 A Because I felt like I need to talk to someone.

11 Q Okay. When you told him did you tell your mom?

12 A No.

13 Q And why not?

14 A I was scared, because Gustavo always told me and my  
15 brother that no matter what we said my mom wouldn't believe me.

16 Q Now do you remember when little Gustavo as born in -- on  
17 February 22nd, 2016?

18 A Yeah.

19 Q Okay. At some point after he was born did you go with the  
20 Defendant to buy a baby seat?

21 A Yes.

22 Q Okay. Do you know when that was?

23 A It was one day before he was back home.

24 Q Okay. And do you know how many days he was in the  
25 hospital, before he was brought home?

1 A No.

2 Q Okay. Was your mom in the hospital with him, when --

3 A Yes.

4 Q Okay. When this happened?

5 A Yes.

6 Q Okay. When you went to get this car seat who was in the car  
7 with you?

8 A It was me, Adonay Gunera-Gustavo -- I mean, Adonay  
9 Octabio, my little brother and Gustavo.

10 Q Okay. So where was Jose Juan?

11 A He -- Gustavo had taken him somewhere, I don't know  
12 where.

13 Q Okay. So is it fair to say that your little brother, he didn't  
14 speak at that point?

15 A Yes.

16 Q Okay. So what conversation did you have in the car with the  
17 Defendant?

18 A At first it was quiet, and then he told me that if I was virgin,  
19 and I answer him, "Yes." I -- he then asked me that if I would like to do it  
20 with him.

21 Q And when he said "to do it with him" what did you take that  
22 to mean?

23 A Some sex. I answered him with no. He told me, "Why,  
24 everyone your age does it." And I told him, "Just because everyone my  
25 age does it, doesn't mean I'm going to be doing the same thing as

1 them."

2 Q And was that the end of that conversation?

3 A Yeah.

4 Q Where there other times he asked you if you -- if you wanted  
5 to have sex with him?

6 A Yes.

7 Q Do you remember when those -- when those times were?

8 A One time when we were leaving the apartment, he asked me  
9 the same question.

10 Q The apartment that you lived in, in between the two mobile  
11 homes?

12 A Yes.

13 Q Okay. And what did you tell him then?

14 A I told him, "No."

15 Q When little Gustavo was born --

16 A Uh-huh.

17 Q -- in February of 2016, do you remember, were you living in  
18 the apartment, or were you living in the mobile home?

19 A Apartment.

20 Q Okay. So you're still in the apartment?

21 A Yes.

22 Q And do you remember another time that he asked you if you  
23 wanted to have -- to do it with him?

24 A No.

25 Q Okay. But it happened a few times?

1 A Yes.

2 Q After he asked you about this how did you feel about the  
3 conversation, when you were driving to get the baby seat?

4 A I felt disgusted and really uncomfortable, I didn't want to be  
5 there anymore.

6 Q When you got home did you tell anyone about what  
7 happened, in the car?

8 A I told my brother --

9 Q Okay.

10 A -- Jose Juan.

11 Q So you had told your brother -- so when you told your  
12 brother did he already know about --

13 A Yes.

14 Q -- what was going on?

15 A Yes.

16 Q Okay. So in February of 2016 by then you had already told  
17 your brother, Jose Juan?

18 A Yes.

19 Q At this point did you think about telling your mom?

20 A I wanted to tell her, but I remember all the threats that  
21 Gustavo had told me about, and the same thing all over again, my mom  
22 was not going to believe me anything.

23 Q So you were afraid to tell your mom?

24 A Yes.

25 Q Because you didn't think your mom would believe you?

1 A Yes.

2 Q And that's based upon what Gustavo told you, the  
3 Defendant?

4 A Yes.

5 Q Let's go to June of 2016. After you finish your eighth grade  
6 year where were your living?

7 A After graduation we moved to the mobile home.

8 Q The mobile home where the police came to in July 2016?

9 A Yes.

10 Q Okay. When you were living in that mobile home in June of  
11 2016, did something else happen, that you felt was inappropriate?

12 A Yes.

13 Q Who was home when this happened?

14 A Me, Adonay Octabio and Gustavo -- and Gustavo.

15 Q Okay. So it was you and your two little brothers?

16 A Yes.

17 Q Were you initially home alone with your two little brothers?

18 A Yes.

19 Q Did you normally have to babysit them every day?

20 A Yes.

21 Q Where was Jose that day?

22 A I don't know, Gustavo took him somewhere.

23 Q Okay. And then Gustavo came home without Jose?

24 A Yes.

25 Q Where was your mom that day?

1 A She was working.

2 Q Okay. So when Gustavo comes home what happens?

3 A There is two incidents that happen, which one are you talking  
4 about?

5 Q The one where he touched you inappropriately?

6 A Okay.

7 Q In June of 2016.

8 A Okay.

9 Q Okay. Tell us about that time, where you're home with the  
10 two kids, and Gustavo comes home?

11 A I was in the master bedroom.

12 Q Okay. And what were you doing in the master bedroom?

13 A I was putting the youngest one to sleep.

14 Q Did both of the young babies sleep in the master bedroom?

15 A Yes.

16 Q This mobile home, where it occurred, how many bedrooms  
17 were there?

18 A Two.

19 Q All right. And one bathroom?

20 A Yes.

21 Q And then what else did the mobile home have?

22 A It had a kitchen and share with the living room. It had  
23 another extra room, and another extra room.

24 Q Were the extra rooms outside the mobile home?

25 A One of them was the front door, and then it's this one room,

1 and then you walk to the other way, and it's the other room.

2 Q Okay. So they're outside the front door, those two rooms?

3 A Technically, yeah.

4 Q Okay. So you're in the master bedroom, putting the  
5 youngest asleep, where was Adonay?

6 A Adonay was already sleeping in the bed.

7 Q And when Gustavo got home what happened?

8 A He came in, I thought that was my brother. But once I saw  
9 him I got scared.

10 Q Okay. And what happened?

11 A He told me to put the baby down, and I did. I asked him,  
12 where's my brother and he didn't respond.

13 Q Okay. And then what happened?

14 A He then told me again to put the baby down. I did.

15 Q Where did you put the baby down, in the crib?

16 A No. Next to me in the bed.

17 Q Okay. What happened at that point, are you sitting on the  
18 bed?

19 A Yes.

20 Q And where is Gustavo?

21 A He's in front of me.

22 Q And then what happens?

23 MS. DIGIACOMO: Your Honor, can we take maybe a break?

24 THE COURT: Yeah. We'll take a short recess.

25 MS. DIGIACOMO: Thank you.

1 THE COURT: During this recess you're admonished, do not  
2 talk or converse amongst yourselves or with anyone else on any subject  
3 connected with this trial, or read, watch or listen to any report of, or a  
4 commentary on the trial, or any person connected with this trial by any  
5 medium of information, including, without limitation, newspapers,  
6 television, radio or internet.

7 Do not form or express any opinion on any subject  
8 connected with the trial until the case is finally submitted to you. We'll  
9 take ten minutes.

10 THE MARSHAL: Please rise for the jury.

11 [Jury out at 3:02 p.m.]

12 [Outside the presence of the jury]

13 THE MARSHAL: Bring her down and come into the ante  
14 room.

15 [Pause]

16 [Counsel confer]

17 MR. SPEED: Madam Clerk, can we have the Court brought  
18 back. Can we have Your Honor brought back in, please? We have a bit  
19 of a situation. She's been sworn in, and she's with the District Attorney.

20 MS. MACHNICH: In a closed room. With potentially another  
21 witness, we don't know who else is in there.

22 [Clerk and counsel confer]

23 [Pause]

24 MR. SPEED: Officer Moody?

25 THE MARSHAL: Yes, sir.



1 MR. SPEED: I have a question for you. I believe that Chief  
2 District Attorney is in the ante room with a witness who's been sworn  
3 and is giving testimony. Would you open that door for us, please, sir.

4 THE MARSHAL: Sure.

5 MR. SPEED: Thank you.

6 [Pause]

7 MR. SPEED: Thank you, sir.

8 [Pause]

9 MS. MACHNICH: We're going to need to speak with His  
10 Honor without the witness present. So perhaps before --

11 THE MARSHAL: Do you want me to put her back in?

12 MS. MACHNICH: Yeah.

13 [Pause]

14 [Outside the presence of the jury]

15 THE MARSHAL: Remain seated. Come to order.

16 THE COURT: Okay. We're on the record, outside the  
17 presence. What's up?

18 MS. MACHNICH: Your Honor, during the break Chief District  
19 Attorney Sandra DiGiacomo went in the ante room with the witness,  
20 who was on the stand, who is currently sworn, and part way through her  
21 testimony the door to the ante room was closed for approximately eight  
22 minutes where she was in there with Ms. DiGiacomo.

23 And then we requested that Marshal Moody open the door,  
24 given how improper it is for a lawyer to be in a closed room with a  
25 witness who is currently giving testimony especially in a criminal case,

1 mid-testimony, right when there was further inconsistencies with her  
2 testimony, and they then sat in the room with the door ajar, for several  
3 additionally minutes.

4 Obviously we did not walk over there to see if anything was  
5 being discussed, however there is covering on the window, it is a  
6 completely obscured door, and Ms. DiGiacomo is sitting there with her  
7 witness having unknown conversations. We believe this is completely  
8 improper, that the District Attorney's know better than to do this. And it  
9 is at this point, Your Honor, we would be moving for a dismissal of the  
10 case because of their egregious conduct.

11 THE COURT: I'll certainly let them respond. But I don't know  
12 of any rule not to. You get to ask them about what was discussed, but --

13 MS. MACHNICH: Your Honor, we're not allowed to talk to  
14 their witnesses.

15 MS. DIGIACOMO: That's not true.

16 THE COURT: No, you've got cross --

17 MS. MACHNICH: The jury --

18 THE COURT: -- you can ask what was discussed.

19 MS. MACHNICH: During testimony, a sworn witness.

20 MS. DIGIACOMO: Yes. Attorneys are --

21 THE COURT: There's a case on point.

22 MS. DIGIACOMO: Yes. Attorneys can't talk about the  
23 testimony, but attorneys can talk to witnesses.

24 THE COURT: And you can ask her what was discussed, it's  
25 not privileged on cross, that's the case that -- actually, it has to do with

1 attorney/ client privilege, which is basically waived if somebody talks to  
2 a witness during break. And I forget the name of it, but it's a published  
3 decision.

4 Go ahead, State?

5 MS. DIGIACOMO: Your Honor, all I was doing in there was  
6 trying to calm her down and just encourage her, because she just kept  
7 saying, "I can't do this. I can't do this." And so I'm like, "You can do  
8 this." And my victim advocate was in there. We did not discuss what  
9 she's testifying to, I was just trying to calm her down.

10 THE COURT: The Defense can ask what was discussed, it's  
11 appropriate. But I don't know of any case that says that -- as I said, the  
12 case on point was where a witness and his counsel discussed, and the  
13 attorney/ client privilege is basically waived, during a break, if in fact  
14 anything is discussed. But this isn't attorney/client, so you can ask what  
15 they just talked about.

16 MS. MACHNICH: Your Honor, I would only say that this is  
17 different, there was never any attorney/client privilege between these  
18 two individuals --

19 THE COURT: I get that.

20 MS. MACHNICH: -- because it's the State of Nevada and  
21 their alleged victim. Just the appearance of impropriety with the door  
22 closed during testimony, that is what the victim witness --

23 THE COURT: Do you have --

24 MS. MACHNICH: -- advocates are for.

25 THE COURT: -- a case?

1 MS. MACHNICH: No. I didn't think that this would come up.

2 THE COURT: All right. All right. I mean, I'll certainly if you  
3 come up with a case I'll reconsider it, but I think the rule is, that, yes, you  
4 get to inquire of the witness what was discussed. But other than that  
5 they --

6 MR. SPEED: Well, Your Honor, we understand that we will  
7 have the opportunity. I'm assuming that the Court is indicating that we  
8 will be given the opportunity to inquire about the contents of the  
9 conversation during cross-examination.

10 THE COURT: Yes.

11 MR. SPEED: Our issue is with the Chief Deputy District  
12 Attorney, the lead prosecutor in this case, speaking to a witness, and  
13 potentially, unlawfully, unduly influencing improperly, influencing her  
14 testimony while secreted away in a closed room for upwards of three to  
15 almost ten minutes, until we had to ask Officer Moody to open the door.

16 THE COURT: I assume --

17 MS. DIGIACOMO: And --

18 THE COURT: -- she discussed the case with her before all  
19 this, and how is that any different?

20 MR. SPEED: She wasn't sworn and giving testimony at that  
21 time.

22 THE COURT: All right. I told you the case that I know of, and  
23 it allows you to inquire on cross as to what was discussed. Other than  
24 that, I don't know of anything that says it's unethical, improper, against a  
25 rule, et cetera. So anything else?

1 MS. MACHNICH: I guess we'd ask to do that outside the  
2 presence of the jury, obviously, asking us to ask questions on cross that  
3 we have absolutely no way of knowing the answer to, would be unfair,  
4 and unduly prejudicial to the Defendant. We don't know what was  
5 discussed and it puts us in a position where we're literally going to be  
6 asking a witness -- we don't know what was discussed.

7 They could have been discussing something that's not  
8 coming into this case, we don't know. It's improper that it happened,  
9 and that it remains our position, however, having to ask her on cross in  
10 front of an impaneled jury is asking for a mistrial.

11 THE COURT: All right. First of all, because you didn't yet, I  
12 don't know, the tenth time, one person is arguing. Have I not made that  
13 clear? I will reiterate, one person argues. I will let you talk to her outside  
14 the presence so you're "not surprised" as you say, and we can do that  
15 now.

16 MS. MACHNICH: Thank you.

17 THE COURT: And it's regarding what was discussed. But  
18 please, we already know this case has taken longer than expected.  
19 Neither side, one attorney making the argument.

20 Okay. Bring in the witness.

21 [Pause]

22 THE MARSHAL: Watch your step. You can go ahead and be  
23 seated.

24 THE COURT: I'll just remind you you're still under oath.  
25 You're still under oath.

1 THE WITNESS: Yes.

2 THE COURT: Go ahead.

3 MS. MACHNICH: Thank you, Your Honor.

4 VOIR DIRE

5 BY MS. MACHNICH:

6 Q Do you prefer Ms. Moran or Meily?

7 A Meily.

8 Q Meily, okay. Meily, here at the break we noticed that you  
9 went to the side -- adjacent room to the courtroom; is that correct?

10 A Yes.

11 Q Okay. And while you were in there, you were also in that  
12 adjacent room with the victim witness advocate.

13 A Who is the --

14 Q The supporting victim witness advocate I believe is the one  
15 who just walked into the courtroom in the red shirt?

16 A Oh, yes.

17 Q Okay. And additionally, one of the Deputy District Attorneys  
18 was in there with you as well?

19 A Yes.

20 Q And I don't know if you know their names, but Ms.  
21 DiGiacomo?

22 A The -- with the pink?

23 Q Yeah. With blonde hair?

24 A Uh-huh.

25 Q Is that correct?

1           A     Yes.

2           Q     Okay. And at this point I'd like to ask you what you guys  
3 talked about while you were in there.

4           A     She just told me I was doing okay, and to calm down.

5           Q     Okay. Did she talk to you about anything you had testified  
6 about already?

7           A     No.

8           Q     Okay. And did she talk to you about anything that you were  
9 going to testify about?

10          A     No.

11          Q     Okay. Did she give you any instructions about how to be on  
12 the stand?

13          A     No.

14          Q     Okay. Did anyone else give you any instructions about  
15 anything relating to your testimony.

16                 MS. DIGIACOMO: Objection --

17                 THE WITNESS: No.

18                 MS. DIGIACOMO: -- Your Honor. Anybody else? I thought  
19 it's limited to what was in the room.

20                 MS. MACHNICH: I can clarify.

21                 THE COURT: Go ahead, clarify.

22 BY MS. MACHNICH:

23           Q     Did anyone else between now and when you left the room at  
24 the break, give you any instructions or tell you anything about your  
25 testimony or how to testify in this case?

1 A No.

2 Q Okay.

3 MS. MACHNICH: Thank you.

4 THE COURT: Okay. All right. Bring the jury in.

5 THE MARSHAL: Yes, Judge.

6 THE COURT: You can remain seated.

7 [Pause]

8 THE COURT: So in case I wasn't clear, I'm denying the  
9 motion to dismiss.

10 MS. MACHNICH: Thank you.

11 THE MARSHAL: Please rise for the jury.

12 [Jury in at 3:22 p.m.]

13 [Inside the presence of the jury]

14 THE COURT: Please be seated.

15 Do the parties acknowledge the presence of the jury?

16 MS. DIGIACOMO: Yes, Your Honor.

17 MR. SPEED: Defense does, Your Honor. Thank you.

18 THE COURT: Please proceed.

19 MS. DIGIACOMO: Thank you.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. DIGIACOMO:

22 Q Okay, Meily. I want to talk to you about something that  
23 happened in the mobile home that you were living in, in June of 2016,  
24 one that you said you moved into right after you finished eighth grade.

25 A Yes.



1 Q Okay. Where we left off you said that you were in the master  
2 bedroom and Gustavo the Defendant was in front of you.

3 A Yes.

4 Q What happened?

5 A Like I said before, I asked him, "Where's my brother," he  
6 didn't respond. He then told me to put the baby down, I did as he said.  
7 And then he told me -- he told me to get up and I did.

8 Q To stand up?

9 A Yes.

10 Q Okay. Was he standing?

11 A Yes.

12 Q And then what happened?

13 A He then told me to pull -- to pull my shorts down.

14 Q And what did you do?

15 A I didn't do it.

16 Q So what happened?

17 A He then told me to come near him, I did, and then he pulled  
18 them from me.

19 Q Okay. Were you standing or sitting when he pulled them  
20 down?

21 A Standing.

22 Q Okay. And then what happened?

23 A He then told me to sit on the bed, and then told me to lay  
24 down.

25 Q Did you do that?

1 A Yes.

2 Q And your pants are down?

3 A Yes.

4 Q What kind of -- do you remember what you were wearing  
5 that day?

6 A I was wearing my gym shorts.

7 Q Like P.E. shorts?

8 A Yes, P.E. shorts.

9 Q Okay. And then what happened when you lay down?

10 A Then he touched me.

11 Q Okay. What body part of his touched you?

12 A His hand.

13 Q All right. And where did it touch you?

14 A My vagina.

15 Q Now was it under clothes, or were your clothes and  
16 underwear completely off?

17 A They were completely off.

18 Q Okay. So his hand touched your bare vagina?

19 A Yes.

20 Q And what did he do when he touched you?

21 A It was first like circling motions, and then he put his fingers  
22 inside.

23 Q Okay. And when you say "circular motions" where, like with  
24 his whole hand, his finger, or something else?

25 A His whole hand.

1 Q Okay. And where was that circular motion?

2 A Outside.

3 Q On the outside. And then you say he put his finger inside?

4 A Yes.

5 Q Do you know if it was one finger, or more than one, or

6 something else?

7 A It felt like one.

8 Q Okay. And how did that feel when he did that?

9 A It felt weird.

10 Q Okay. What happened when he did that? Did he keep doing

11 it, or did he stop?

12 A He kept doing it for a couple of minutes and then he stopped.

13 Q Okay. When you said he kept doing it for a couple of

14 minutes was his finger inside you?

15 A Yes.

16 Q Was it just inside you stationary, or did it move around?

17 A It moved around.

18 Q And this is inside your vagina?

19 A Yeah.

20 Q Okay. Did any of your body parts touch his body? Anything

21 on your body touch his body?

22 A I'm confused.

23 Q Okay. That is a confusing question. Let's says, did your

24 hands touch his body?

25 A No.

1 Q What were you doing with your hands when this was going  
2 on?  
3 A I had them in fists.  
4 Q Okay. And where were they?  
5 A They were in my sides.  
6 Q Okay. So you had your hands down to your side, and your  
7 hands were balled in fists?  
8 A Yes.  
9 Q And why were they balled in a fist?  
10 A Because I was -- I felt disgusted what he was doing to me, I  
11 felt mad.  
12 Q Okay. Did you ever say anything to him about what he was  
13 doing?  
14 A I told him to stop doing it, it was making me uncomfortable.  
15 Q And what did he say?  
16 A He didn't say anything.  
17 Q He kept doing it?  
18 A Yes.  
19 Q Okay. Did any other body part on him touch your vagina?  
20 A His tongue.  
21 Q Okay. And how did that happen?  
22 A He then stopped, pulled his finger out, and he stuck his  
23 tongue in there.  
24 Q Inside your vagina?  
25 A Yeah.

1 Q Okay. And when you say, "inside your vagina," like where  
2 inside, like what happens with that area where he was sticking his  
3 tongue?

4 A Can you rephrase it?

5 Q Sure. Where he put his finger inside you, I guess -- well,  
6 what happens with that area where he put his finger. Like does  
7 something ever come out of you, if you have to use the restroom, or --

8 A I -- I guess where I pee.

9 Q Okay. All right. And then when he used his tongue did he  
10 put it in the same place?

11 A Yes.

12 Q And so it was inside your vagina?

13 A Yes.

14 Q And how did that feel?

15 A Weird, I never felt that before.

16 Q Okay. Did it -- I guess, did his tongue move around, did it  
17 stay stationary --

18 A It moved --

19 Q -- or something else?

20 A -- up and down.

21 Q Up and down, inside your vagina?

22 A Yes.

23 Q What happened when he was done doing that?

24 A He told me to turn around, but when I was going to do that  
25 one of the babies started crying.

1 Q Okay. He told you to turn around, you mean --  
2 A Right --  
3 Q -- to go on your stomach?  
4 A Yes.  
5 Q And did he have his clothes on when this was going on?  
6 A Once the baby cried I turned around, and he had his pants  
7 pulled down.  
8 Q Okay. And you hadn't seen that before?  
9 A No.  
10 Q Did you see his private area?  
11 A Yes.  
12 Q And do you know another name for that private area that you  
13 saw?  
14 A A penis.  
15 Q And what did it look like?  
16 A It was brown and wrinkly.  
17 Q When the baby cried what happened after that?  
18 A I immediately got up and pulled my clothes up again.  
19 Q And what did he do, what did the Defendant do?  
20 A He went and wiped his mouth with a tissue.  
21 Q And then what happened?  
22 A He then received a call, he went outside the room, and I  
23 grabbed the baby and started calming him down.  
24 Q Did he say anything to you before this all happened, or not  
25 before, while it was going on did he say anything?

1 A No.

2 Q After this happened, how did your vagina feel later?

3 A It -- it felt weird.

4 Q Okay.

5 THE COURT: Counsel, approach.

6 [Sidebar begins at 3:30 p.m.]

7 THE COURT: So I forgot, when we were taking a break Steve  
8 said that some of the jurors can't see the Defendant, and they expressed  
9 they want to see the Defendant. Comments? What do you want to -- is  
10 there --

11 MS. MACHNICH: I don't --

12 MR. SPEED: What's obstructing their view, is it Ms.  
13 DiGiacomo, of the lectern, or Elmo --

14 THE COURT: I'm not sure. That's the thing, I have no idea. I  
15 assume there is a lot --

16 MS. MACHNICH: It could be everything depending on where  
17 they're sitting.

18 THE COURT: There's the TV, there's the --

19 MS. SUDANO: I don't know what we can do.

20 MS. DIGIACOMO: We'd have to know what's blocking it.

21 THE COURT: Steve? I forgot, sorry. Nobody wrote it, this is  
22 Steve's note. Did they tell you what's in the way?

23 THE MARSHAL: [Indiscernible]. They didn't say what was in  
24 the way, they just said they can't see [indiscernible].

25 THE COURT: What's there?

1 THE MARSHAL: [Indiscernible].

2 THE COURT: They are entitled. They want to see his  
3 reaction. Suggestions? I don't want to sit there and stare over there.  
4 You guys know what's over there, what's over there? The monitor.

5 MS. DIGIACOMO: It must be the monitor in front of them.

6 MS. MACHNICH: It's on an angle. I mean, we can move the  
7 monitor when we don't use it --

8 THE COURT: Yeah.

9 MS. MACHNICH: -- that's fine.

10 THE COURT: Try that, and then --

11 MS. MACHNICH: Sure.

12 THE MARSHAL: Move it to your far right.

13 THE COURT: -- maybe during the break we'll check it out.

14 Okay. Move the monitor.

15 MS. MACHNICH: Okay.

16 THE COURT: All right. Go ahead.

17 [Sidebar ends at 3:32 p.m.]

18 MS. DIGIACOMO: May I, Your Honor?

19 THE COURT: Go ahead.

20 MS. DIGIACOMO: Oh, I'll wait for counsel.

21 THE COURT: Yeah.

22 THE MARSHAL: Judge, before we continue, there's --  
23 someone has a phone, or something is vibrating, and it's being heard  
24 over the speaker. Does anybody have a phone that's on vibrate? If it is,  
25 please turn it off, please.



1 MS. DIGIACOMO: I think it's mine, it's on. It's off now.

2 THE COURT: Everybody's got phones.

3 MS. DIGIACOMO: Yes, I apologize.

4 THE COURT: Go ahead.

5 MS. DIGIACOMO: Thank you.

6 BY MS. DIGIACOMO:

7 Q After this happened you said you picked up your baby  
8 brother, and he left. Did Gustavo leave the house, or did he just leave  
9 the room?

10 A He just leave the room.

11 Q Okay. Did you -- was anything ever said between the two of  
12 you again that day about what happened?

13 A He, not a lot. But he told me she was going to -- he then  
14 came back into the room and told me he was going to pick up my  
15 brother.

16 Q Jose?

17 A Yes.

18 Q Okay. Then did he leave?

19 A He came outside, and I followed him, and he told me that  
20 day, that the next day I had to -- I was going to be forced to have sex  
21 with him, even if I didn't want it.

22 Q Okay. so let's back up a little bit. The day that you described  
23 when these things happened in the master bedroom, you said, "he left  
24 the room" and then he left go pick up Jose?

25 A Yes.

1 Q Did you follow him outside that day, or was it a different  
2 day?

3 A No, that day.

4 Q Okay. So let's go back. Well, let's talk about it. You said  
5 after that happened in the bedroom, did you tell your mom, or your  
6 brother Jose about what had happened that day?

7 A After -- after he left the house?

8 Q Yes. After he had touched you down on your vagina, with  
9 his tongue and his finger?

10 A After that I called my mom, to her work.

11 Q Okay. Now do you recall testifying previously in a hearing  
12 back in 2016?

13 A Yes.

14 Q Okay. And do you remember during that hearing when you  
15 said that incident happened, in relation to when you told your mom.

16 A Yes.

17 Q When was that?

18 A Can you repeat the question again?

19 Q Okay. Let me do it this way. The day that you finally told  
20 your mom --

21 A Uh-huh. Yes.

22 Q -- what happened that day that you told your mom?

23 A What I told you just happened.

24 Q Okay. Now do you recall testifying in a prior hearing that  
25 what you testified just happened, actually happened a couple of weeks

1 before you told your mom?

2 A I'm confused.

3 Q Okay.

4 MS. DIGIACOMO: The Court's indulgence.

5 BY MS. DIGIACOMO:

6 Q All right. If I was to show you your testimony from, I believe  
7 it was September of 2016, regarding when you said the incident  
8 happened where he used his tongue and his finger on your vagina,  
9 would that refresh your recollection?

10 A Yes.

11 MS. DIGIACOMO: Okay. Counsel, page, it looks like 8 and 9.  
12 The Court's indulgence.

13 [Pause]

14 MS. DIGIACOMO: The Court's indulgence.

15 [Counsel confer]

16 MS. DIGIACOMO: I'm sorry, the Court's indulgence.

17 [Pause]

18 MS. DIGIACOMO: Okay. And I apologize. It is her  
19 statement, counsel, not her preliminary hearing transcript. It's going to  
20 be pages 11 to 12.

21 MS. DIGIACOMO: May I approach, Your Honor?

22 THE COURT: Yes.

23 MS. DIGIACOMO: Okay.

24 BY MS. DIGIACOMO:

25 Q I'm going to show you -- well, first of all do you remember

1 giving an interview to a woman at the Children Advocacy Center?

2 A Yes.

3 Q And was that the same day that the police came to your  
4 home?

5 A Yes.

6 Q Okay. If I was to show you that transcript would that refresh  
7 your recollection as to when you said the incident happened where he  
8 used his finger and his tongue on your vagina.

9 A It believe so.

10 Q Okay. So what I'm going to do is I'm going to ask you to  
11 read page 11, and then page 12, up until the top of the page, okay. You  
12 read that to yourself, and then just let me know when you're done.

13 A And what did you say, starting from here?

14 Q Yes.

15 [Witness reviews document]

16 BY MS. DIGIACOMO:

17 Q Okay. Did you read through to the middle of the page, the  
18 top part --

19 A Uh-huh.

20 Q -- did you read through there?

21 [Witness reviews document]

22 THE WITNESS: Uh-huh.

23 BY MS. DIGIACOMO:

24 Q Okay. Was that yes, for the record; you read it?

25 A Yes.

1 Q Okay. Does that refresh your recollection?

2 A Yes.

3 Q Okay. So when you were at the Children's Advocacy Center  
4 and you were interviewed, the incident that you just talked about where  
5 he used his tongue on your vagina, and inserted his finger in your  
6 vagina, was it the day before this interview or was it in June, or week's  
7 before?

8 A It was -- it was the day before the arrest.

9 Q It was, okay. But you saw that you told the person who  
10 interviewed you, the day the police came, you told them it was the fourth  
11 week of June, from when vacation school started.

12 MS. MACHNICH: Objection, Your Honor. Now she's leading  
13 her own witness.

14 THE COURT: Sustained, as to --

15 MS. DIGIACOMO: Well, Your Honor, I'm allowed --

16 THE COURT: Okay.

17 MS. DIGIACOMO: That's fine.

18 BY MS. DIGIACOMO:

19 Q All right. So let's talk about what happened the day before  
20 the police were called and you told your mom, what happened on that  
21 day?

22 A What I told you just happened.

23 Q Okay. So that happened on that day?

24 A Yes.

25 Q And then you said you followed him outside?

1           A     Yes.

2           Q     Okay. And what happened when you followed him outside?

3           A     I just followed into the living room.

4           Q     Oh, into the living room, I'm sorry.

5           A     Yes. And he turned around and told me that the next day,  
6 which is when the police arrived, I was going to have sexual intercourse  
7 with him, even if I didn't want to.

8           Q     Okay. And did anything else happen?

9           A     Then he left.

10          Q     Okay. Now at any time did his mouth or tongue ever touch  
11 your lips on that day?

12          A     Not that day.

13          Q     Okay. What day did that happen?

14          A     It was a week or two before that happened.

15          Q     Okay. So tell me about that incident?

16          A     That day I was in the living room with the youngest baby.  
17 He was sleeping in my arms.

18          Q     Okay.

19          A     He came home. My brother had texted me before -- before  
20 he came home, that Gustavo was on his way. So he came home, I didn't  
21 look at him. He came -- he then went to the back room, brushed his  
22 teeth, came, sitting next to me, and he asked me if I had -- if I ever have  
23 had my first kiss. I told him, "No." He told me, "Would you like to have  
24 one?" I said, "No." He then told me to give him a kiss, I did give him a  
25 kiss on the cheek. He then told me that was not a kiss, that was a peck.

1 So then he kissed me without my consent.

2 Q Okay. And you said he kissed you. What did he kiss you  
3 with?

4 A His lips and his tongue.

5 Q And where did he kiss you on your body?

6 A My lips.

7 Q Okay. Was his mouth open?

8 A Yes.

9 Q Okay. How long did the kiss last? Was it very quick like a  
10 peck, or was it something else?

11 A It was something else.

12 Q A little bit longer?

13 A Yes.

14 Q Okay. And then what happened after that he kissed you?

15 A After that he stood up and I screamed at him, "Why do you  
16 kiss me," and he didn't say anything. Out of nowhere he started saying  
17 that I had to obey him. I told him that I don't obey anyone except my  
18 mom. He told me that I was his woman, and I told him, "I'm nobody's  
19 woman."

20 He then changed the subject saying that I was a lazy person  
21 because I didn't have a job. I told him, "I'm underage I can't look for a  
22 job right now." He then told me, "Your mom works, your brother works,  
23 but you don't do anything." He then said, "I'm going to kick you out of  
24 the house," and he grabbed me by my hair, trying to make me leave the  
25 house.

1 Q Okay. And this was a couple of weeks before you told your  
2 mom?

3 A Yes.

4 Q The day you called your mom and told her what happened,  
5 you said that you followed him out into the living room?

6 A Yes.

7 Q And were any words exchanged between you and he there?

8 A What I told you before, that he told me that I was going to  
9 have sexual intercourse with him, if I wanted to or not.

10 Q Okay. Did he threaten to throw you out of the house that day  
11 if you didn't have sexual intercourse with him?

12 A Yes.

13 Q Was your brother home that day

14 A No.

15 Q Okay. Did he eventually leave?

16 A Yes.

17 Q Okay. What was he doing, or where was your brother when  
18 you called your mom to tell her what happened?

19 A I don't know where my brother was. I just know that he had  
20 went with Gustavo.

21 Q You knew he what?

22 A I just knew that Gustavo took him somewhere.

23 Q Okay. And did you call your mom in front of Gustavo?

24 A No.

25 Q And why not?



1 A Because I was scared.

2 Q Okay. How many times do you think you called your mom

3 that day?

4 A One time.

5 Q Okay. And she was at work?

6 A Yes.

7 Q And you told her what?

8 A What he did that day, this same day.

9 Q Okay. And did you tell her everything that had happened?

10 A Yes.

11 Q And did you tell her what was supposed to happen the next

12 day?

13 A Yes.

14 Q Did your mom come home from work right away?

15 A She couldn't.

16 Q Okay. So she stayed at work?

17 A Yes.

18 Q And then when she got home do you remember about what

19 time it was that night?

20 A 12:00. 12:00 p.m. -- a.m. It was 12:00 at night.

21 Q Okay. So like midnight?

22 A Yes.

23 Q Okay. And did you or your mom say anything to Gustavo

24 that night?

25 A No.

1 Q And why not?

2 A Because we were scared.

3 Q Okay. So the next day your mom called the police?

4 A Yes.

5 Q Were you present when she called the police?

6 A Yes.

7 Q And where was Gustavo when you called the police?

8 A He had gone somewhere with my brother.

9 Q Okay. Did they go to work?

10 A I believe so.

11 Q Did you know what time they were going to get home?

12 A Lunchtime.

13 Q All right. And do you know about what time the police got to

14 your house?

15 A 11:00, I think. I'm not really sure.

16 Q Okay. Were you -- when the police were there did you tell

17 them that it's possible Gustavo was going to come home?

18 A Yes.

19 Q And so what did you tell them?

20 A We told them he had taken my brother, and we didn't know

21 where they were, so they told us they were going to wait for him home,

22 if we knew when he was going to come back; we told him during

23 lunchtime.

24 Q Okay. Do you know, did Gustavo come home while the

25 police were there?

1 A Yes.

2 Q What happened at that point?

3 A We were outside explaining the situation to a policeman,  
4 when he just showed up. My mom pointed, saying, "That's him." And  
5 he pressed -- he just went past her, he just like zoomed, and went past  
6 her. And that's where -- that's where the policeman got into their cars  
7 and they followed him.

8 Q Okay. Did you see where the police stopped him?

9 A No.

10 Q Or were you still at the house?

11 A When my brother came back to us, he told me that they were  
12 stopping --

13 Q Well, don't -- yeah, don't tell me what your brother said.

14 A Okay.

15 Q Did you ever see Gustavo again that day, after that day?

16 A No.

17 Q When you told your mom, why weren't you scared anymore  
18 to tell her?

19 A I was tired. I was tired of having to go through the same  
20 thing with him.

21 Q Okay. And how did you feel about his statement that you  
22 were going to have sex with him the next day?

23 A I felt more scared.

24 Q Okay. Did you want to have sex with him the next day?

25 A No.

1 Q And -- we'll strike that.

2 Did you know what it meant when he said that he wanted to have  
3 sex with you?

4 A Yes.

5 Q Okay. What did you understand that to mean?

6 A Sexual intercourse.

7 Q Did you ever try and tell him that you had your period?

8 A Yes.

9 Q And what was the purpose of that?

10 A Trying to stop him.

11 Q Okay. So did you tell him that day that you called your  
12 mom?

13 A Yes.

14 Q So what did you tell him?

15 A Well, he told me to pull my pants down, I told him, "I can't,  
16 I'm on my period," but he didn't believe it.

17 Q So if I understanding correctly, though, he was upset with  
18 you because you didn't work?

19 A Yes.

20 Q Or at least that's what he told you?

21 A Yes.

22 Q What was it your job to babysit your two baby brothers every  
23 day?

24 A Yes.

25 Q And at the time that he was upset for you for not working,

1 how old were you?

2 A Thirteen.

3 Q And you were 13 years old when the police came to the  
4 house on July 12th?

5 A Yes.

6 Q Now the day that the police were called were you worried  
7 about where your brother was?

8 A Yes.

9 Q And why? Why were you worried about where Jose was?

10 A Gustavo was a scary person.

11 Q Okay. Had he ever -- I know you said that he had threatened  
12 to throw you out of the house. Had he ever threatened to hurt you, or --

13 A He threatened --

14 Q -- anyone?

15 A -- to --

16 MS. MACHNICH: Your Honor, objection.

17 THE COURT: You may approach.

18 MS. MACHNICH: May we approach?

19 [Sidebar begins at 3:51 p.m.]

20 MS. MACHNICH: Your Honor, she's tried to elicit improper  
21 testimony, she's walking us into a mistrial. This is improper testimony  
22 about threats that were made. It's not something this witness  
23 volunteered previously. She's trying to bring them out now. It's overly  
24 prejudicial. It's not something -- I mean, threats in this manner, it could  
25 have been a bad act. There's may thing that could have been done to

1 discuss this previously, but now at the end of this witness' testimony  
2 she's directing the witness into what will become a mistrial.

3 MS. DIGIACOMO: I'm sorry, so what's the legal objection, I  
4 didn't hear it?

5 MS. MACHNICH: Failure to file a bad acts motion, improper  
6 testimony --

7 THE COURT: What was the --

8 MS. DIGIACOMO: Well, actually, threat -- a defendant  
9 directly threatening a victim, that's case law, that comes in, that's not a  
10 bad act.

11 THE COURT: What -- I mean, she asked that a long time ago,  
12 but what was your actual question?

13 MS. DIGIACOMO: I was asking about -- because she said  
14 that she was scared about her brother, and I was trying to ask why she  
15 was scared, and about threats that he had made, because she had said  
16 that he threatened to throw her out of the house --

17 THE COURT: I'm not going to --

18 MS. DIGIACOMO: He'd also threatened to harm them --

19 THE COURT: Go on.

20 MS. DIGIACOMO: I mean, Your Honor believes it's --

21 THE COURT: All right. Go on.

22 MS. DIGIACOMO: No, that's what I was going to say, he's  
23 also threatened that he would -- there were other incidents that I'm not  
24 getting into, but he would --

25 THE COURT: Does she know --

1 MS. DIGIACOMO: -- threaten to hurt --

2 THE COURT: -- that she can't into prior --

3 MS. DIGIACOMO: Yes. Yes. But she should be able to say  
4 that he threatened to harm her, her mom, or her brother?

5 MR. SPEED: No. That has nothing to do with the allegations  
6 of sexual abuse. Any discussion by this witness of alleged threats are so  
7 closely related to the allegations of domestic violence, that it would  
8 contravene the Court's earlier order, and they aren't allowed to mention  
9 any of that.

10 MS. DIGIACOMO: And I'm sorry, again, who's arguing this  
11 for the Defense?

12 THE COURT: Yes. I was going to say that yet again. You  
13 know --

14 MR. SPEED: Defendant's counsel are arguing this, Your  
15 Honor.

16 THE COURT: -- she's really good. You're doing great. You  
17 don't need two people. You're the -- I don't know who's senior, actually,  
18 because I haven't done it. But in any event, choose somebody and make  
19 the argument.

20 Now as to -- I'm not going to allow her to get into domestic  
21 violence --

22 MS. DIGIACOMO: No, I don't intend to.

23 THE COURT: -- but the fact that she was scared is certainly  
24 legitimate, and if he's threatened her, or whatever, that's not the same as  
25 what we're talking about. The reason she's not talking can come in.

1 MS. DIGIACOMO: Right. And that's why I was trying to  
2 direct it directly to the threat --

3 THE COURT: And in fact --

4 MS. DIGIACOMO: -- so she doesn't open up and say  
5 something about things she's seen.

6 THE COURT: So --

7 MS. MACHNICH: I just -- I am very concerned with this line  
8 of questioning --

9 THE COURT: Well, I'm concerned --

10 MS. MACHNICH: -- because she's already mentioned --

11 THE COURT: -- but she said that she's discussed it with her,  
12 that she knows not to -- do you want to take a break and make sure she  
13 knows not to --

14 MS. DIGIACOMO: Well, no. She said he's a scary person.  
15 That's why I was trying to direct it to threats he has made versus why do  
16 you think he's a scary person, because that would open, you know --

17 THE COURT: You're asking --

18 MS. DIGIACOMO: -- that would open it --

19 THE COURT: -- her threats against her?

20 MS. DIGIACOMO: Or her brother, or her mom; that's it.

21 MR. SPEED: Those are irrelevant.

22 MS. DIGIACOMO: How is it irrelevant.

23 MR. SPEED: I'm sorry, Your Honor.

24 THE COURT: I'm going to -- if she was afraid, you can ask  
25 her why she was afraid for herself. I don't see, we're really going to just



1 get into the DV, if we go there. So ask her about her. I'll certainly allow  
2 that.

3 MS. DIGIACOMO: Okay. I will ask it very specific.

4 [Sidebar ends at 3:55 p.m.]

5 BY MS. DIGIACOMO:

6 Q Okay, Meily. You said that Gustavo was a scary person, in  
7 your mind?

8 A Yes.

9 Q Do you remember that, okay. Did Gustavo ever threaten to  
10 harm you?

11 A Me?

12 Q Yes.

13 A No.

14 Q Okay. Did he ever threaten to harm somebody close to you?

15 A Yes.

16 Q Okay. And did that affect how you, I guess, chose not to tell  
17 your mom?

18 A Yes.

19 MS. DIGIACOMO: The Court's indulgence.

20 [Counsel confer]

21 MS. DIGIACOMO: Your Honor, at this time I will pass the  
22 witness.

23 THE COURT: Cross-exam.

24 MS. MACHNICH: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MS. MACHNICH:

2 Q All right. Good afternoon.

3 A Good afternoon.

4 Q You said that prefer Meily or Ms. Moran?

5 A Meily.

6 Q Meily, okay.

7 I want to keep this as straightforward as possible. So there  
8 are three time when you say Gustavo physically did something to you;  
9 three occasions, correct?

10 A Yes.

11 Q Okay. We have one -- you've testified here today it happened  
12 in August 2015, correct?

13 A Yes.

14 Q And this was the flat hand, washing the table, in your vaginal  
15 area, correct?

16 A Yes.

17 Q Okay. And we'll reference that as your first claim.

18 There's one from the -- what you said was the finger  
19 insertion in your vagina and oral contact, correct?

20 A Yes.

21 Q And here today you've testified that that happened in July  
22 2016?

23 A Yes.

24 Q Okay. And then you also have one regarding a mouth and  
25 tongue kiss, correct?

1 A Yes.

2 Q Okay. And that one you're saying happened in June 2016?

3 A Yes.

4 Q Okay. Now fair to say your mom called the police on July

5 12th, 2016?

6 A Yes.

7 Q Okay. And since your mom called police you've told your

8 story many times?

9 A Yes.

10 Q You talked to your mom about what you say happened?

11 A That day that I call her, yes.

12 Q Yes. And you've also spoken with her since?

13 A Only when it's needed.

14 Q Okay. So that's, yes?

15 A Yeah.

16 Q And you've also spoken with your brother, Jose --

17 A Yes.

18 Q -- correct? About what happened?

19 A Only when I talk to him about it.

20 Q Okay. And you've spoken with him since this was -- since

21 mid-July 2016, as well?

22 A Yes.

23 Q Okay. You also spoke with police officers that first came to

24 your home on July 12th?

25 A Yes.

1 Q Right. And I don't know if you remember, you spoke with  
2 Officer Kravetz?

3 A I remember.

4 Q Fair enough. You were also interviewed by Ms. Espinoza,  
5 later in the day on July 12, 2016?

6 A Children's Services?

7 Q Yes.

8 A Yes.

9 Q You testified in a preliminary hearing in this case, correct?

10 A I don't understand.

11 Q You also told you story, on what you say happened at a  
12 preliminary hearing in this case, in September 2016?

13 A Yes.

14 Q It was before a different judge?

15 A Okay. Yes.

16 Q Downstairs in this building?

17 A I think so.

18 Q If you remember.

19 A Yes.

20 Q Okay. And you also testified at a family court custody  
21 hearing in February of 2017?

22 A Yes.

23 Q All right. And again, there was a different judge?

24 A Yes.

25 Q Okay. So let's start with your brother -- your brothers. You

1 have three brothers?

2 A Yes.

3 Q The brother closest to your age, with whom you share a  
4 father, is Jose Juan Moran?

5 A Yes.

6 Q All right. He is about two years younger than you --

7 A Yes.

8 Q -- right? As of July 2016, as you told the State, you lived with  
9 Jose?

10 A Yes.

11 Q All right. And let me see. It would be your testimony that  
12 Jose was never in the room where he could have witnessed any of the  
13 incidents you say happened?

14 A Yes. He was not in the room.

15 Q All right. You also testified when you were speaking with the  
16 State that Jose went with Gustavo many times, correct?

17 A Yeah.

18 Q And many of those times, from your testimony you said you  
19 didn't know where Gustavo took Jose?

20 A Yes.

21 Q But you did know that Jose went to work with Gustavo?

22 A Yes.

23 Q And Gustavo works laying -- or worked at that time laying  
24 tile?

25 A Yes.

1 Q And when Jose went with him he would assist him with that?

2 A Yes.

3 Q Right. But you don't know the exact locations of the houses?

4 A Correct.

5 Q All right. Just so we have that clear. Now, speaking with,

6 when you've spoken with your mother, you said that you first told your

7 mother the day before the police were called?

8 A Uh-huh.

9 Q Correct?

10 A Yes.

11 Q Okay. And that was -- so it would have been July 11, 2016?

12 A Yes.

13 Q Yes. And you called her while she was work?

14 A Yes.

15 Q Right. And at that time your mother worked at her brother's

16 restaurant, correct?

17 A Yes.

18 Q So she worked with your uncle?

19 A Yes.

20 Q All right. You called her around 5:00 or 5:30?

21 A Afternoon.

22 Q Okay. Afternoon, late afternoon?

23 A It was already sundown, it was getting late -- darker.

24 Q Okay. Would you say before 6:00 p.m., after 6:00 p.m.?

25 A 6:00 p.m.

1 Q Right around then, okay. And your mother came home after  
2 her shift ended, you testified here, around midnight?

3 A Yes.

4 Q All right. And you said that she couldn't have left her shift?

5 A She couldn't.

6 Q But she did work with your uncle?

7 A Yes.

8 Q All right. Now let's turn our attention to when officers first  
9 came to your house on July 12th. All right?

10 A Okay.

11 Q Okay. The first, as we discussed briefly, you don't remember  
12 his name, the first officer you spoke with asked you some preliminary  
13 questions about what happened?

14 A Yes.

15 Q Okay. And they want -- you wanted to tell the officers your  
16 story of what had occurred?

17 A Yes.

18 Q All right. And you knew at that time that Gustavo was going  
19 to find out that the police were called at some point?

20 A Yes.

21 Q You knew he would be angry?

22 A Yes.

23 Q Okay. You did not want to live with him anymore?

24 A Exactly.

25 Q All right. So you spoke with officers and you told them

1 several things during that time period. You said that Gustavo had been  
2 touching your body all over, and your vagina?

3 A Uh-huh.

4 Q Yes?

5 A Yes.

6 Q Okay. You said that first happened last June?

7 A Last June?

8 Q Yes.

9 A Of what year?

10 Q Of 2015?

11 A Yes.

12 Q Okay. You said that it had been happening around once a  
13 month for the last year?

14 A Excuse me?

15 Q You told responding officers that the sexual abuse had been  
16 happening around once a month for the past year?

17 A I don't remember that.

18 Q Okay. But you do recall speaking with officers on July 12th?

19 MS. MACHNICH: The Court's brief indulgence.

20 [Counsel confer]

21 BY MS. MACHNICH:

22 Q And, Meily, were you aware that officers were wearing body  
23 cameras while they were speaking with you?

24 A No.

25 [Counsel confer]



1 MS. MACHNICH: Your Honor, at this time I wish to play for  
2 the witness her statement, captured via bodycam on Officer Kravetz'  
3 camera on July 12th at 2016?

4 THE COURT: Any objection?

5 MS. DIGIACOMO: Well, Your Honor, it needs to be marked  
6 as an exhibit.

7 MS. MACHNICH: Your Honor, I don't think that that is  
8 necessary. We can certainly have an exhibit made of this.

9 THE COURT: Yeah. It needs to be an exhibit, isn't it -- but  
10 this is different than that other exhibits?

11 MS. MACHNICH: Yes, Your Honor. This has her statement.

12 THE COURT: All right. Mark it.

13 MS. MACHNICH: We're going to have to put these sections  
14 onto a CD, so we can have the CD case marked at this time.

15 MS. DIGIACOMO: If they would just like to use the State's  
16 we do have one with sound, if you want to just admit it, that we didn't  
17 admit before, and you can play that. I believe it's State's Exhibit --

18 THE COURT: Counsel, approach --

19 [Sidebar begins at 4:05 p.m.]

20 THE COURT: Is there something that we shouldn't have on  
21 the --

22 MS. MACHNICH: Your Honor, there are things that shouldn't  
23 be on there. There are also -- we're not seeking to admit all of it, we  
24 don't think it's proper.

25 MS. DIGIACOMO: If they're going to part of it, we might as

1 well do all of it. We can do that.

2 MS. MACHNICH: You know we're going to need to go  
3 through and make sure there's nothing improper on there, then. So I'm  
4 not comfortable doing that at this time. I believe what is admissible is  
5 her prior inconsistent statement with what she said today.

6 MS. DIGIACOMO: But if they're going to play something it  
7 has to be marked and admitted.

8 THE COURT: Well, and if --

9 MS. MACHNICH: It actually does not, for impeachment.

10 THE COURT: Yes. But if you play something for  
11 impeachment they're entitled to bring in whatever --

12 MS. DIGIACOMO: The rest of it.

13 THE COURT: -- before, to lay a foundation, or to refute it. In  
14 other words, just like in a depo, you're saying, you know, line 102 is  
15 impeachment, but line 101, they're entitled to bring that in.

16 MS. MACHNICH: Your Honor, I think it depends on the  
17 content, I think it depends on --

18 THE COURT: I agree, but I don't know --

19 MS. MACHNICH: -- what they're bringing it in under, and  
20 that's a discussion to have, going through it with Your Honor, I guess.  
21 Because at this point the only thing is admissible would be her prior --

22 MS. DIGIACOMO: She's yelling, and this is a bench  
23 conference.

24 MS. MACHNICH: I'm not yelling, I'm speaking --

25 THE COURT: All right --

1 MS. MACHNICH: -- and there's very loud white noise, so --

2 THE COURT: All right. So --

3 MS. MACHNICH: Your Honor --

4 THE COURT: -- what you're saying is we're not ready to do  
5 this?

6 MS. MACHNICH: Oh, Your Honor, I don't think it's proper to  
7 bring in anything further. We didn't intend to admit it as an exhibit, but  
8 only to use it as impeachment, and to play it for her, because she denied.  
9 There are other sections, as I've been asking her questions, and she's  
10 acknowledged things that she did properly state. I have not played them  
11 on bodycam, because it's not proper. And so I am now asking to play  
12 something that she declined to acknowledge that she said.

13 THE COURT: And I agree that that's admissible, but as I said  
14 -- well, all right. Then when they want to bring something in --

15 MS. DIGIACOMO: But here's the State's concern. Now she's  
16 about to play something in open court that there's no record of. It needs  
17 to be something that -- she can't just start playing all kinds of stuff in  
18 open court that's impossible to make a record for. It needs to be on a  
19 disc, and it marked. Even if they don't want to admit it, it's being  
20 published to the jury. This is different than using a transcript and  
21 saying --

22 THE COURT: Well, she said --

23 MS. DIGIACOMO: -- do you remember saying this?

24 THE COURT: -- she was going to mark it.

25 MS. MACHNICH: We can certainly mark it.

1 THE COURT: She said she's going to have it marked, and it's  
2 going to be -- the trouble is, as you said, there's other things on it.

3 MS. DIGIACOMO: Uh-huh.

4 MS. MACHNICH: But --

5 MS. DIGIACOMO: But if they play one snippet, then we can  
6 bring in the rest of it.

7 MS. MACHNICH: Not if it's not proper.

8 MS. DIGIACOMO: There's nothing on there about DV.

9 THE COURT: All right, then. We're going to have to take -- I  
10 want that part on the disc that you want to introduce, as impeachment,  
11 whatever, and then they're going to have what they want to bring in for -  
12 - yes. If you don't want it all in you can't play something that -- well, I  
13 guess it can be picked up, but certainly what's said is not transcribed.

14 MR. SPEED: We have -- well, if I may, Your Honor --

15 THE COURT: All right. Go ahead.

16 MR. SPEED: If I may. We have the ability to have the witness  
17 hear particular parts of the statement that Ms. Machnich wants to play.  
18 We don't have to publish what we have recorded for the jury in order to  
19 impeach her on a statement that she made previously. It's a prior  
20 inconsistent statement, we're not looking to admit into evidence, so --

21 MS. DIGIACOMO: Then why would you -- go ahead.

22 MR. SPEED: Pardon me. I agree that it's not necessary at  
23 this point to mark it as a Defense proposed exhibit. Now they have  
24 access to the same evidence that we do, they know what they're talking  
25 about, what their witnesses are talking about on this snippet of the

1 bodycam. We don't want to have it introduced, and I don't think you  
2 need to in order to impeach her with her prior inconsistent statement.

3 MS. DIGIACOMO: Yeah. Wait, wait --

4 THE COURT: You just want to ask her, did you make --

5 MS. DIGIACOMO: Correct.

6 THE COURT: -- a prior statement where you said, blah, blah,  
7 blah? Yes. But that's not getting it --

8 MS. DIGIACOMO: Into evidence.

9 MS. MACHNICH: Well, I --

10 THE COURT: -- on camera.

11 MS. DIGIACOMO: You can't just play it. It has to --

12 THE COURT: Or playing it, yeah.

13 MS. MACHNICH: I mean --

14 MS. DIGIACOMO: You have to lay the foundation.

15 MS. MACHNICH: I did lay the foundation.

16 THE COURT: Counsel --

17 MS. MACHNICH: I believe at this point it is proper  
18 impeachment. There is no transcript, as we stated. This would be the  
19 only way to confront her with the impeachment. I could seek to refresh  
20 her recollection, if the Court would prefer, and I can bring up  
21 headphones and have her listen to it, and then acknowledge that this is  
22 something that she said.

23 If that's something that Your Honor would prefer that I do, I  
24 can at this point, but I know it's my right to do impeachment or  
25 refreshing.

1 THE COURT: If you play the whatever, disc, then yeah,  
2 they're going to be able to play other things on the disc. So if you want  
3 to ask her, did you make a prior statement to the police, I think you even  
4 started --

5 MS. MACHNICH: I did.

6 THE COURT: -- to do that. But playing it now is problematic,  
7 since you didn't pull that off of the entire disc, and then --

8 MS. DIGIACOMO: May I?

9 THE COURT: -- what are they going to play as rebuttal. As I  
10 said, just like in a depo they're entitled to put it in context.

11 MS. DIGIACOMO: And may I be heard, Your Honor?

12 THE COURT: Go ahead.

13 MS. DIGIACOMO: Okay. So this is the State's point. If they  
14 want to -- if they want to impeach her with what they call a "prior  
15 inconsistent statement" they have to confront the witness about it, which  
16 she's done, but that prior inconsistent statement comes in for  
17 substantive. So it's not -- they can't just play something in open court,  
18 and then now it's part of the record, and they've impeached her, it has to  
19 be done properly.

20 We bring in the witness who heard the statement, or you lay  
21 the foundation for a disc you want to get in, with her statements on the  
22 bodycam. You can't just play it in open court without laying any proper  
23 foundation for it.

24 MS. MACHNICH: Your Honor, she's --

25 THE COURT: Well, they're already --

1 MS. MACHNICH: -- incorrect.

2 THE COURT: -- bringing the --

3 MS. MACHNICH: We can bring --

4 THE COURT: -- that officer back.

5 MS. MACHNICH: -- that officer back.

6 MR. SPEED: Right.

7 THE COURT: So --

8 MS. DIGIACOMO: And then that's the time that they play it.

9 THE COURT: All right.

10 MS. MACHNICH: We can refresh her recollection.

11 THE COURT: Go ahead and try to refresh her recollection,  
12 and then, yes, we'll be here until three weeks, but the officer is coming  
13 back.

14 [Sidebar ends at 4:12 p.m.]

15 BY MS. MACHNICH:

16 Q Meily, would it refresh your recollection to view a video of  
17 yourself saying the statement that it had happened around once a month  
18 for the last year, to police officers, on July 12th, 2016?

19 A Could you repeat that again?

20 Q Of course. Would it refresh your recollection to watch a  
21 video of yourself saying the statement I have just said?

22 A I don't remember technically, anything, it's been years since I  
23 said what I said.

24 Q Do you believe that it would refresh your recollection to  
25 watch a video of yourself saying that?

1 A No.

2 Q Okay.

3 MS. MACHNICH: The Court's brief indulgence.

4 [Counsel confer]

5 MS. MACHNICH: All right. And, Your Honor, as we  
6 discussed, we're recalling the officer.

7 BY MS. MACHNICH:

8 Q All right. Meily, do you also recall speaking to officers and  
9 telling them you were asked -- strike that.

10 Do you also recall speaking with officers and stating that  
11 Gustavo -- let me try this again, I'm sorry, Meily.

12 Do you recall officers asking if Gustavo tried anything else  
13 beyond touching you, and you saying that it was just him touching you?

14 A I don't remember.

15 Q You don't remember saying that either?

16 A No. Like I said, it's been years.

17 Q Right. So it would be fair to say, based on your prior answer,  
18 that a watching a video of yourself, stating that to the officers would not  
19 refresh --

20 MS. DIGIACOMO: Objection --

21 BY MS. MACHNICH:

22 Q -- your recollection?

23 MS. DIGIACOMO: -- Your Honor.

24 MS. MACHNICH: Excuse me?

25 MS. DIGIACOMO: Can we approach?



1 THE COURT: Yes.

2 [Sidebar begins at 4:14 p.m.]

3 MS. DIGIACOMO: When she keeps saying, "Would it refresh  
4 your recollection to watch a video of yourself saying that," that's  
5 improper.

6 MS. MACHNICH: She's --

7 MS. DIGIACOMO: Can I finish? She's basically testifying.  
8 What would be proper to say, hey, do you remember what you said to  
9 the police? No. If I showed you a video from that day would that refresh  
10 your recollection, not her testifying each time, would it refresh your  
11 recollection to watch a video of you saying [indiscernible].

12 MS. MACHNICH: Your Honor, I'm doing it properly, she just  
13 doesn't like what I'm saying.

14 THE COURT: No, sorry, that's not the right way. You can't  
15 testify as to what -- if you're showing somebody a blank piece of paper --  
16 you learned this and we all did in law school, a blank of piece of paper,  
17 you don't say -- or whatever is on the paper, you don't say, is this on the  
18 paper, you show it to them to refresh their memory. Does that refresh  
19 your memory as to what was said.

20 So I'm sustaining the objection.

21 MS. MACHNICH: You'd like --

22 THE COURT: Yeah. That's not the right way to do it.

23 MS. MACHNICH: To be clear, you would like me to be more  
24 general in my statements --

25 THE COURT: If you're asking her --

1 MS. MACHNICH: -- with regarding to refreshing recollection?

2 THE COURT: -- it would be -- would the video refresh your  
3 memory as to what was said.

4 MS. MACHNICH: Okay. I can be more general

5 THE COURT: All right.

6 MS. MACHNICH: That's fine.

7 THE COURT: I'm sustaining the objection.

8 [Sidebar ends at 4:16 p.m.]

9 BY MS. MACHNICH:

10 Q And Meily, with regard to what we were just discussing,  
11 would it refresh your recollection to watch a video of your statements  
12 that day?

13 A Can you repeat that again?

14 Q Of course. We were just discussing some statements that  
15 you made to police. And my question to you is would it refresh your  
16 recollection to watch video of the statements that you made that day?

17 A I don't think it will help me.

18 Q Okay. Thank you. Do you recall telling officers on July 12,  
19 2016 that Gustavo kissed you yesterday?

20 A Yesterday?

21 Q Correct.

22 A What do you mean yesterday?

23 Q Do you recall speaking with officers and telling them,  
24 yesterday he kissed me?

25 A Which year?

1 Q 2016, July 12th?

2 A The day before?

3 Q Yes.

4 A The day before the police came?

5 Q Correct.

6 A I don't remember.

7 Q Okay. And would watching the video of the statements you  
8 made to police that day refresh your recollection?

9 A I don't think it'll help.

10 Q Okay. Would it be fair to say that you never told officers  
11 when they responded to your home on July 12, 2016, you never told  
12 them anything about Gustavo putting his mouth on your vagina?

13 A Excuse me?

14 Q When officers responded to your home on July 12, 2016, you  
15 never mentioned Gustavo putting his mouth on your vaginal region?

16 A I don't remember.

17 Q Okay. Would watching a video of your statements made that  
18 day refresh your recollection?

19 A No.

20 Q Okay. Thank you. All right. Meily, next I'd like to turn your  
21 attention to statements and questioning that you had at the Southern  
22 Nevada Children's Advocacy Center. Do you recall speaking with Ms.  
23 Espinoza?

24 A Yes.

25 Q All right. And that was later in the day on July 12, 2016?

1 A Yes.

2 Q All right. During the first part of the interview, Ms. Espinoza  
3 asked you some general questions?

4 A Yes.

5 Q Questions like tell me everything about the abuse?

6 A General questions?

7 Q Yes.

8 A Do you mean -- can you give me an example?

9 Q Yes, Meily. Like, tell me everything about the abuse.

10 A She didn't ask that at first.

11 Q At some point during the questioning process -- during the  
12 first half of your interview with Ms. Espinoza, did Ms. Espinoza ask you  
13 to tell her everything about the abuse?

14 A She told me to explain the situation.

15 Q Okay. So, you recall speaking with Ms. Espinoza on July 12,  
16 2016?

17 A Yes.

18 Q Yes. You are aware that statement and that discussion was  
19 being recorded at the time?

20 A Yes.

21 Q Okay. And you were asked the following question by Ms.  
22 Espinoza, "Tell me everything about the abuse."

23 A Yes.

24 Q That's correct?

25 A Yes, but not I the beginning.

1 Q Correct. My question was within the first half. Is that  
2 accurate?

3 A I believe so.

4 Q Thank you. All right. You told her, among other things, a  
5 few of these things I'm going to speak directly about right now. You told  
6 her it started last year, correct?

7 A Last year, which year?

8 Q On July 12, 2016, you told Ms. Espinoza it started last year?

9 A You mean 2015? When it started. Everything, when  
10 everything started it started 2015.

11 Q My question to you is, Ms. Espinoza asked you to tell her  
12 about the abuse and in response, among other things, you told her it  
13 started last year, correct?

14 A But which year are you talking about?

15 Q This statement was made on July 12, 2016.

16 A Not that one. Which year? The one being with the question.  
17 Do you mean the year before 2016?

18 Q Meily, I'm referencing statements that you made. So, I'll  
19 repeat my question. On July 12, 2016, you spoke with Ms. Espinoza at  
20 the Children's Advocacy Center, correct?

21 A Correct.

22 Q You were asked about the abuse that you made allegations  
23 about, correct?

24 A Yes.

25 Q Please let me finish my question. And you told Ms. Espinoza,

1 among other things, that the abuse started last year?

2 A Last year, 2015, yes.

3 Q Okay. You also told her that it happened every single week  
4 or month?

5 A I don't remember saying that.

6 Q Okay. You recall giving a statement to Ms. Espinoza on July  
7 12, 2016?

8 A Yes.

9 Q Okay. You recall that it was recorded at that time?

10 A Yes.

11 MS. DIGIACOMO: Objection. Asked and answered.

12 MS. MACHNICH: Your Honor, I have to go through this for  
13 impeachment.

14 MS. DIGIACOMO: She already asked that though.

15 THE COURT: I'll overrule it. Go ahead.

16 BY MS. MACHNICH:

17 Q Thank you. And you were asked the following question and  
18 in part gave the following pertinent answer. You were asked by Ms.  
19 Espinoza, tell me --

20 MS. DIGIACOMO: Objection, Your Honor. May we approach?

21 THE COURT: Yes.

22 [Sidebar begins at 4:22 p.m.]

23 MS. DIGIACOMO: Your Honor, there's a proper way to  
24 impeach the witness and there's an improper way to impeach the  
25 witness.

1 MS. MACHNICH: And this is the proper way.

2 MS. DIGIACOMO: It's actually not. She needs to ask the  
3 witness whether she recalls making the statement and then she can go  
4 up, show it to her, ask if that's refreshed her recollection. But she can't  
5 just read it into the record.

6 MS. MACHNICH: Actually, that's inaccurate. That's  
7 refreshing recollection. Impeachment is something different.

8 THE COURT: What's that? Go ahead.

9 MS. MACHNICH: Your Honor, impeachment is something  
10 different than refreshing recollection. I am not required to refresh her  
11 recollection at any point. That is a different questioning technique. I am  
12 at this point impeaching her and I'm impeaching her by reading her  
13 expressed statement into the record as part of a question and answer,  
14 which is proper impeachment.

15 MS. DIGIACOMO: She needs to be given the opportunity to  
16 be confronted.

17 THE COURT: It's not a -- is this under oath? What's the deal  
18 with this statement? Is it recorded?

19 MS. DIGIACOMO: It is recorded.

20 MS. MACHNICH: It was recorded.

21 MS. DIGIACOMO: It's a recording.

22 MS. MACHNICH: It's recorded and transcribed, Your Honor.  
23 It was provided by the State as part of discovery. It was an interview  
24 between Ms. Espinoza, the Children's Advocacy Center and this witness.  
25 First it was the forensic interview that was done.

1 THE COURT: What about the authentication, all of that stuff?

2 MR. SPEED: Your Honor, this is Kevin Speed for the record.

3 It doesn't have to be authenticated. This is a prior statement by the  
4 witness who is testifying at trial. It's not hearsay and we're allowed to  
5 impeach her with whatever we want. It's cross-examination. We're  
6 asking her leading questions. We don't have to refresh her recollection  
7 because -- for a number of reasons we're not required to refresh her  
8 recollection. We're impeaching a witness with a prior inconsistent  
9 statement. She's had the opportunity to explain or deny and she is  
10 subject to cross-examination on the statement or redirect examination  
11 by the State if they have an issue with one of the points that are brought  
12 out in impeachment.

13 THE COURT: And this -- so, there's a transcript of this  
14 statement?

15 MS. MACHNICH: Yes. I am impeaching her directly from the  
16 translated statement provided by the State of Nevada as part of this  
17 case.

18 MR. SPEED: And she was asked questions in direct  
19 examination about her interview with Ms. Espinoza.

20 MS. MACHNICH: And we believe Ms. Espinoza will be a  
21 witness.

22 MS. DIGIACOMO: And Judge.

23 THE COURT: You have to -- yeah?

24 MS. DIGIACOMO: Sorry, I don't mean to interrupt. So, the  
25 proper way to do it is to give the witness, this witness, the opportunity to



1 admit or deny the statement. If they deny it, then we bring in Elizabeth  
2 Espinoza for the statement. They can just read the record or read into  
3 the record the statement.

4 THE COURT: It's the same thing as a depo, guys.

5 MR. SPEED: Your Honor, it's not the same thing as a  
6 deposition.

7 THE COURT: It is the same as a depo.

8 MR. SPEED: This is a criminal case and we're impeaching a  
9 witness on the witness stand, Your Honor.

10 THE COURT: Yes.

11 MR. SPEED: It's not the same thing as a deposition.  
12 Deposition testimony is made under oath.

13 THE COURT: Yes.

14 MR. SPEED: This isn't deposition testimony and we're not  
15 claiming that it's made under oath. It's not subject to the same rules of  
16 procedure as deposition testimony might be. But, we're allowed to  
17 impeach using a prior inconsistent statement after she's been given the  
18 opportunity to explain or deny, plus she's subject to redirect examination  
19 by the State on the particular points of the statement that we're using.  
20 And she's testified to different points of this statement in direct  
21 examination.

22 So, in our cross-examination, because we're covering the  
23 scope of her direct examination, we're allowed to impeach her with  
24 inconsistencies from the very same statement that the State used to  
25 direct their examination.

1 MS. MACHNICH: In fact, the State refreshed her recollection  
2 with part of this statement, pages 11 and 12 specifically, during their  
3 direct examination. They used this statement as well. It's a  
4 transcription. I'm happy to bring it up and show, Your Honor.

5 THE COURT: Please.

6 MS. MACHNICH: Okay.

7 THE COURT: So -- okay, you're right it's a translation?

8 MS. MACHNICH: Correct. During the first part there was no  
9 interpreter used.

10 [Court reviews transcript]

11 THE COURT: All right. We're back on. So, your argument is  
12 that you can read it and then ask her if she said it?

13 MS. MACHNICH: Do you recall stating the following, is  
14 proper. Do you recall being asked the following question and giving the  
15 following answer. This was after we laid the foundation.

16 THE COURT: That's fine. But I don't think you did that.

17 MS. MACHNICH: I was in the process of specifically stating  
18 that, which was you were asked the following question or statement by  
19 Ms. Espinoza and you gave in relevant part, the following answer. And  
20 that was when the State was objected.

21 MS. DIGIACOMO: Well, it's the form.

22 THE COURT: All right. Well, yes --

23 MS. MACHNICH: No. It's proper impeachment.

24 THE COURT: That's just as I said, like a depo. Did you state  
25 that? So, I'll allow it. All right.

1 MS. MACHNICH: Thank you.

2 [Sidebar ends at 4:28 p.m.]

3 THE COURT: Objection is overruled.

4 BY MS. MACHNICH:

5 Q Thank you, Your Honor. Meily, I'd like to turn your attention  
6 back to what we were just discussing prior to the brief break. In that you  
7 gave a statement to Ms. Espinoza at the Advocacy Center on July 12,  
8 2016?

9 MS. DIGIACOMO: Objection. Asked and answered.

10 THE COURT: Overruled.

11 BY MS. MACHNICH:

12 Q Is that correct?

13 A Excuse me?

14 Q You recall giving a statement to Ms. Espinoza at the  
15 Children's Advocacy Center on July 12, 2016?

16 A Yes.

17 Q Okay. And do you recall that it was a recorded interview at  
18 that time?

19 A Yes.

20 Q And in relevant part you were asked the following question  
21 and gave the following relevant portion of answer. Question, "Tell me --

22 MS. DIGIACOMO: Objection, Your Honor. She hasn't denied  
23 saying it.

24 THE COURT: Approach.

25 MS. MACHNICH: She did before the break.

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[Sidebar begins at 4:29 p.m.]

THE COURT: The witness has to be afforded the opportunity.

MR. SPEED: To explain or deny.

MS. MACHNICH: To explain or deny. I asked her -- I already asked her.

MR. SPEED: She recalls that she said no.

MS. MACHNICH: But I'm happy to ask her that again and then start this.

MR. SPEED: She said no, I don't recall saying that.

MS. MACHNICH: I did and that's why I started the impeachment process because she said I don't remember saying that.

MR. SPEED: [Indiscernible] I don't remember. I don't think refreshing my recollection would be helpful because it's been years.

MS. DIGIACOMO: Yeah, that was the video.

MS. MACHNICH: No. I also asked about this.

MR. SPEED: Right.

MS. MACHNICH: It was my next question.

THE COURT: [Indiscernible].

MS. DIGIACOMO: But, Your Honor, the State's point is she asked her, did you say this to Elizabeth Espinoza? If she says no, then we bring in Elizabeth Espinoza to bring in the statement. She doesn't just get to keep reading statement and answer.

THE COURT: [Indiscernible].

MS. DIGIACOMO: And also, you have the interpretation issue.

1 MS. MACHNICH: Your Honor.

2 MS. DIGIACOMO: Because the interview was done -- it  
3 started in English but went to Spanish.

4 THE COURT: All right. Wait a second.

5 MR. SPEED: Your Honor, would you instruct the witness not  
6 to speak with the interpreter, please?

7 MS. DIGIACOMO: It's the other way.

8 MR. SPEED: She's not a victim witness advocacy person.

9 MS. MACHNICH: They need to stop talking.

10 MS. DIGIACOMO: It's just the interpreter.

11 MS. MACHNICH: I know, but.

12 THE COURT: Ms. what's her name?

13 MR. SPEED: Madam Interpreter.

14 THE COURT: All right. Don't talk to each other unless it's  
15 interpreting please. [Indiscernible] if the statement is offered against a  
16 party, this is not a party. So, this doesn't meet the statement fulfills all  
17 the conditions required in subsection 3, which it doesn't meet any of the  
18 requirements. Prior statement of a witness has to meet subsection 3.  
19 Here's subsection 3 of 51.035.

20 MR. SPEED: Pardon me, Your Honor.

21 THE COURT: And I don't see how it meets any of the  
22 requirements of --

23 MS. MACHNICH: Your Honor, it's the party's own statement.

24 THE COURT: What's that?

25 MS. MACHNICH: It is in fact party's own -- it is her

1 statement.

2 THE COURT: She's not a party.

3 MS. MACHNICH: to Ms. Espinoza. She is a party. She's the  
4 victim or the alleged victim.

5 MS. DIGIACOMO: She's not a party.

6 THE COURT: The party is the defendant or the plaintiff in a  
7 civil case.

8 MS. MACHNICH: Your Honor, this is a hearsay definition.  
9 This is not hearsay. It's her prior statement.

10 THE COURT: No. This -- read this.

11 MS. MACHNICH: Yes.

12 THE COURT: It says down here.

13 MS. MACHNICH: But this is extrinsic evidence. That's not  
14 correct.

15 THE COURT: Prior statement of a witness.

16 MS. MACHNICH: It's the prior statement, her prior  
17 statement. It's not hearsay. It doesn't violate the hearsay rule if it's her  
18 prior statement. It's a prior inconsistent statement under the hearsay  
19 rules and it is proper impeachment testimony.

20 MR. SPEED: Subsection 2(a), Your Honor. Subsection 2(a),  
21 or.

22 THE COURT: Right.

23 MR. SPEED: The witness is afforded the opportunity to  
24 explain or deny and the opposite party is afforded the opportunity to  
25 interrogate the witness thereon. They'll be given that opportunity at

1 redirect examination, but we can impeach with anything that we want.  
2 That's the point. That's why there's an or.

3 THE COURT: Extrinsic evidence of a prior contradictory  
4 statement by a witness is inadmissible unless (a), the statement fulfills --  
5 all right, we agree -- (a), fulfills all the conditions required by subsection  
6 3 --

7 MR. SPEED: Right.

8 THE COURT: -- of 51.035.

9 MR. SPEED: Right. I agree with all of that.

10 THE COURT: Okay.

11 MR. SPEED: But section 2(a) also says or the witness is given  
12 the opportunity to explain or deny and the opposing party is given the  
13 opportunity to interrogate the witness there on. The conjunction is or,  
14 or. So, the Court isn't bound by the first of that.

15 THE COURT: You're right. The witness is afforded an  
16 opportunity to explain or deny the statement. All right.

17 MS. DIGIACOMO: But it's different then reading questions.

18 THE COURT: He's right. The or does allow it.

19 MS. DIGIACOMO: Can I finish?

20 THE COURT: Go ahead.

21 MS. DIGIACOMO: I was just going to say her -- if she asks  
22 the witness, hey, did you say this to Elizabeth Espinoza and she says no,  
23 they don't just get to read in the answer.

24 MS. MACHNICH: Yes, I do.

25 MS. DIGIACOMO: No.

1 MS. MACHNICH: That's impeachment.

2 MR. SPEED: That's impeachment.

3 MS. DIGIACOMO: Can I finish?

4 MS. MACHNICH: You've stated it multiple times, Ms.  
5 DiGiacomo.

6 MS. DIGIACOMO: Well, I still haven't got to finish. So, they  
7 don't get to do it. They have to bring in the witness who heard the  
8 statement who gets to impeach them and put in the prior inconsistent  
9 statement.

10 MR. SPEED: That would be the State.

11 MS. DIGIACOMO: They don't -- can I finish?

12 THE COURT: All right, Counsel. All right. We're going to  
13 take a break.

14 [Sidebar ends at 4:34 p.m.]

15 THE COURT: We're going to take 10 minutes, ladies and  
16 gentlemen. During this recess you're admonished do not talk or  
17 converse amongst yourselves or with anyone else on any subject  
18 connected with this trial or read, watch, or listen to any report of or  
19 commentary on this trial or any person connected with this trial by any  
20 medium of information, including without limitation newspapers,  
21 television, radio or internet or form or express any opinion on any  
22 subject connected with the trial until the case is finally submitted to you.  
23 We're going to take 10 minutes.

24 [Jury out at 4:34 p.m.]

25 [Outside the presence of the jury]



1 THE MARSHAL: Please be seated. I believe the State was  
2 talking.

3 MS. DIGIACOMO: Thank you, Your Honor. The State's  
4 objection is that the way they're trying to get in the prior inconsistent  
5 statement is improper. They confront the witness; did you say this to  
6 this person? If they say no, the remedy is for them to bring in the other  
7 person they said it to and put in their statement to them as a prior  
8 inconsistent statement.

9 It is not for Defense counsel to read the transcript into the  
10 record. What Counsel says is not evidence. So, that's why the State is  
11 objecting. They're not just confronting her. They're trying to do  
12 question/answer and put it -- read it all into the record. That's not  
13 proper.

14 MS. MACHNICH: Your Honor, may I respond?

15 THE COURT: Yes.

16 MS. MACHNICH: It is proper impeachment to confront  
17 witnesses with prior inconsistent statements when we have something  
18 such as a transcript of which we have many in this case. The proper  
19 impeachment technique, as Your Honor will recall from depositions, is to  
20 give them the chance to commit them to their current statement, commit  
21 them to not remembering or saying they never said something, then  
22 making sure they understand when the statement was made and  
23 confronting them, and do you recall being asked the following question  
24 and giving the following answer. Question, answer.

25 Sometimes this goes on much longer than that. It is proper

1 impeachment. The State's version of impeachment that they've stated  
2 that may be their preferred method. It's not the only method. This is  
3 what Defense attorneys do constantly. We constantly impeach. And we  
4 are under no obligation to refresh a witness's recollection, especially a  
5 hostile witness. We have no requirement to doing that. We may go  
6 straight into our impeachment. And pursuant to NRS 50.135, it's 2(b)  
7 that applies in this case.

8           The State will have a chance to speak with their witness  
9 again on redirect to discuss anything that we've discussed on cross. But  
10 this is a proper technique. It is being executed properly and it will be a  
11 large -- from the witness's demeanor on the stand at this time, a large  
12 part of our cross-examination because she's not acknowledging having  
13 made statements previously.

14           MS. DIGIACOMO: Right. And if she's not acknowledging it,  
15 Counsel's remedy to get that prior inconsistent statement into evidence  
16 substantively is not for her to read the question and answer. That is not  
17 evidence. What an attorney asks is only -- gets into evidence as it relates  
18 to the answer. If she's saying no, I don't remember, she doesn't get to  
19 stand here and go question, answer, question, answer. She needs to  
20 bring in the person who heard the statement who she made the  
21 statement to to get in that inconsistent statement.

22           MS. MACHNICH: And, Your Honor, that's not required.

23           THE COURT: All right. Under 50.135, I don't think it's  
24 required to bring them in. It's -- the witness will be afforded an  
25 opportunity to explain or deny the statement, et cetera. So, I'm going to

1 allow it.

2 MS. MACHNICH: Thank you, Your Honor.

3 THE COURT: How late are we going to go because this is  
4 going to take a while?

5 MS. DIGIACOMO: Yes, it is. And, Your Honor, just so  
6 everyone's aware, if they are going to do this, we have -- obviously can  
7 bring in the entire statement.

8 MR. SPEED: No, they can't.

9 MS. MACHNICH: That's not accurate, Your Honor.

10 MS. DIGIACOMO: We can. If you're going to bring in part of  
11 it --

12 MR. SPEED: They cannot.

13 MS. DIGIACOMO: We're going to bring in all of it.

14 THE MARSHAL: Counsel, one at a time.

15 THE COURT: Counsel, I'm doing my best not to sanction  
16 both of you. That's why I took a break. You're professionals and I know  
17 you know better than to yell at each other or talk over each other. I hope  
18 you will stop it. We're going to take a break.

19 [Recess taken from 4:40 p.m. to 5:05 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. I looked up some cases and my clerk  
22 did. I think *Lobato*, 120 Nev. 512, is closest and basically although the --  
23 certainly the transcript of the video doesn't come into evidence. You can  
24 impeach the witness by asking did you testify and whatever it is that X, Y  
25 and Z. It's certainly relevant to impeach a witness.

1                   So, as far as asking the witness who is on the stand whether  
2 in the prior statement taken on the date, whether they stated whatever it  
3 is they stated, that's the proper procedure for impeachment on extrinsic  
4 evidence. Are you clear?

5                   MS. DIGIACOMO: Yes, Your Honor.

6                   MR. SPEED: Yes, Your Honor. We are.

7                   THE COURT: All right. You want to do another half hour or?

8                   MS. MACHNICH: We will completely submit to, Your Honor.  
9 We certainly have more than a half an hour, so.

10                  THE COURT: I get that. I hate to waste some time because  
11 we are -- the way this is going, we're going into next week for sure. And  
12 I'm going to tell them that. I don't see -- even though, by the way, I got  
13 Judge Johnson to volunteer to take Wednesday morning, that's still  
14 not -- the way -- as long as it's taken for this, I'm sure we're going into a  
15 week from today, if not Tuesday. Does anybody think otherwise?

16                  MS. DIGIACOMO: No, Your Honor.

17                  THE COURT: All right. Then we might as well call it quits for  
18 tonight since we're looking at next week.

19                  MR. SPEED: Your Honor, if I may, respectfully, sir? I think  
20 we probably need to head off another 15 minutes or so of argument.  
21 When the Court went into recess, we were discussing whether the State  
22 would be allowed to introduce the entire contents of these statements  
23 that we're using for impeachment and admit them into evidence.

24                  THE COURT: None of it comes in as evidence. If they want  
25 to rehabilitate, if you will, based on other statements, that's allowed the

1 same way. Did you also testify that whatever it might be? But certainly,  
2 under *Lobato* and the statute, the State is allowed to rehabilitate, but  
3 none of this, to my knowledge, gets to come in as evidence.

4 MS. MACHNICH: And that was our understanding as well.

5 MS. SUDANO: Your Honor, can I be heard on that?

6 THE COURT: Sure.

7 MS. SUDANO: I would direct, Your Honor, to *Crew v. State*  
8 100 Nev. 38, to be admissible under NRS 51.0352(b). Prior consistent  
9 statements must have been made at a time when the declarant had no  
10 motive to fabricate. It then goes on to say that since Defense counsel  
11 read from the statement to attack a witness's testimony, the Prosecution  
12 was entitled to introduce the statement into evidence to clarify the  
13 inconsistencies pointed out by counsel.

14 THE COURT: Well, if you're saying somehow that everything  
15 in the entire statement, and I don't think -- clearly, if he said or she said  
16 he did something totally whatever that's inadmissible, that doesn't come  
17 in. So, yes, like I just said, if you have something to rebut the  
18 inconsis -- alleged inconsistency, you can read that also. But the  
19 entirety, no. Because obviously -- you know, I didn't look -- it looked like  
20 it was 50 pages. And if, you know, oh, he committed a murder 10 years  
21 ago, you're saying somehow that would come in?

22 MS. SUDANO: No. And we're not trying to get that in, Your  
23 Honor. However, I'm going to continue reading from the case, "Most of  
24 the witness's testimony was consistent with the statement. The  
25 inconsistencies went only to detail. Appellant cannot be permitted to

1 use parts of the prior statement to impeach the declarant's testimony  
2 and then to withhold that statement from the jury on grounds of  
3 unreliability."

4 So, when they bring it in, we get to bring in anything where  
5 she's talking about those portions of the statement that are consistent.  
6 So, we're not saying that that opens the door to the domestic violence  
7 coming in. We're not saying anything about that. But, if they're going to  
8 read from her statement, then the entirety of the statement where she is  
9 talking about these allegations comes in.

10 THE COURT: Well, I don't know what you're referring to, but  
11 in general, I just said you get to rebut it with portions that are consistent.  
12 So, I think that's clear enough. I don't know what's in the 50 or so pages,  
13 but. I think that's pretty much what I said.

14 MS. SUDANO: But the statement itself does come into  
15 evidence, so we would permitted to play --

16 THE COURT: Well, it says appellant cannot be permitted to  
17 use parts of a prior statement to impeach the declarant's testimony and  
18 then to withhold that same statement from the jury on grounds of  
19 unreliability. I haven't read the entirety, but it sounds like it's saying  
20 exactly. You get to bring in the parts you want.

21 MS. SUDANO: That's correct, Your Honor. And the  
22 statements themselves would come in.

23 THE COURT: Well, I'll read -- this is -- oh, wait. This is a prior  
24 case.

25 MS. SUDANO: Yes.

1 THE COURT: 1984. I'll read it, but I don't think any of it is  
2 admitted to the jury. You can again bring in the prior consistent if you  
3 will. But I'll read this tonight.

4 MR. SPEED: Thank you, Your Honor.

5 THE COURT: I admonished them, so I'm letting them go and  
6 they can come back -- what time are we starting?

7 THE CLERK: 10:30.

8 THE COURT: 10:30, tell them 10:30.

9 MS. MACHNICH: And, Your Honor, may the witness be  
10 admonished not to speak with anyone about her testimony? I don't  
11 know she has been instructed. We're confident in law enforcement  
12 witnesses but just because I'm assuming she's going home with her  
13 mom and brother tonight.

14 THE COURT: That's fine with me.

15 MS. MACHNICH: Thank you, Your Honor.

16 THE COURT: This and 84 case *Lobato's* 2004.

17 MR. SPEED: Right.

18 THE COURT: 2005. I certainly don't think the entirety or the  
19 statement itself is admitted. You can read from it. Did you say, and the  
20 State gets to refresh or whatever by saying well, didn't you say before  
21 that X, Y or Z. All right. We're in recess.

22 MR. SPEED: Thank you, Your Honor. Your Honor, before the  
23 Court retires, we did want to have the witness admonished personally, in  
24 person by the Court not to speak about her testimony with her parents or  
25 her brother or anyone else who is working with her in conjunction with

1 the District Attorney's Office or Child Protective Services or whomever.

2 THE COURT: Well, I think the same is what I said before. I  
3 can ask if she talked to somebody.

4 MR. SPEED: Well, but she hasn't been admonished before  
5 going home, and that's where we think we might run into some trouble  
6 with this young witness.

7 MS. DIGIACOMO: The State did tell them when the child  
8 starts, they're not allowed to discuss their testimony with each other.  
9 But since Mr. Speed doesn't want us talking to her, you know, the were  
10 admonished on that last night, but I can remind her again.

11 THE COURT: All right. Bring her in, fine. Bring her in. Ms.  
12 Moran, please don't talk to anybody regarding your testimony. We're  
13 going to need you to come back tomorrow. Other than that, have a good  
14 afternoon.

15 THE WITNESS: Okay.

16 THE COURT: Thank you.

17 [Proceedings concluded at 5:16 p.m.]

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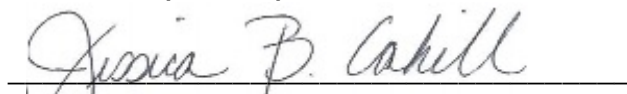
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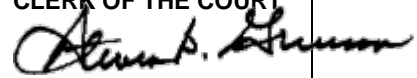
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audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.



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1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,  
9 Plaintiff,

10 vs.

11 GUSTAVO ADONAY GUNERA-  
12 PASTRANA,  
13 Defendant.

)  
) CASE#: C-16-318461-1  
)  
) DEPT. XXVIII  
)  
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14 BEFORE THE HONORABLE RONALD J. ISRAEL  
15 DISTRICT COURT JUDGE  
16 TUESDAY, JUNE 11, 2019

17  
18 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 6**

19 APPEARANCES:

20 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.  
MICHELLE SUDANO, ESQ.

21 For the Defendant:

22 KEVIN SPEED, ESQ.  
23 TEGAN MACHNICH, ESQ.

24  
25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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None		

<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
None		

1 Las Vegas, Nevada, Tuesday, June 11, 2019

2  
3 [Case called at 10:31 a.m.]

4 THE COURT: C-31A461, State of Nevada v. Mr. Gunera-  
5 Pastrana. Let the record reflect counsel and Defendant are all present.  
6 We're outside the presence of the jury.

7 So as I said, I think this case could go as long as Tuesday,  
8 and I'm hoping it's only Tuesday. I don't know all the witnesses either  
9 side has, but in any event, I certainly think we need to tell that there's no  
10 chance we'll be done Friday. We need to tell the jury and I think we need  
11 to do it now and then, as much as I'm afraid to ask them if there's  
12 anybody who can't be available next week and hope that we don't have  
13 somebody bring in four kids.

14 MR. SPEED: A few questions have been on my mind since  
15 we started, at least yesterday. Are we dark Wednesday, tomorrow, or  
16 no? Have we decided? I --

17 THE COURT: No.

18 MR. SPEED: -- heard the Court say that we found -- that it  
19 found a replacement.

20 THE COURT: Yes. We're starting --

21 MR. SPEED: So we will start tomorrow?

22 THE COURT: -- early. We have all day, but I still don't think  
23 that's going to mean that we'll be done on Friday. What do you think?

24 MR. SPEED: I'm a little bit more optimistic, and Ms.  
25 Machnich is also, Your Honor. I believe that we -- I won't say in all

1 likelihood we'll be done Friday, but with the way that witnesses are  
2 going, Meily is finished. We're on our cross-examination of the  
3 complainant. I'm not sure how many more witnesses the State intends  
4 to call. Again, this is a physical evidence, no findings case.

5 THE COURT: All right. State, what do you think?

6 MS. DIGIACOMO: Your Honor, it depends on where the  
7 Defense goes, it depends on who they're calling --

8 THE COURT: I get that.

9 MS. DIGIACOMO: -- but I would anticipate that we still have  
10 -- I don't think we're done with Meily by far. I don't even know if we'll  
11 get through to her brother and a mother today, because we do have the  
12 conference testimony today at 3:30 of Dr. Cetl. So I would hope we're  
13 done by Friday, but honestly, I think you need to question them about  
14 next week, because even if we got it argued on Friday, there's still  
15 deliberations they might have to come back for.

16 MR. SPEED: And my concern there, Your Honor, is we've  
17 been through jury selection, we've been through our first few witnesses.  
18 I don't want to tip the Court's hand or be a part in tipping the Court's  
19 hand as to its pessimism about us being able to complete the trial. I  
20 don't want to give them reasons readymade for saying, oh well I cannot  
21 be here, I've got plans made, and already starting the manufacturing  
22 process before we even get to Thursday of this week. And again, I'm a  
23 little bit more hopeful than everybody else seems to be.

24 MS. DIGIACOMO: And Your Honor, too, I just would point  
25 out, when we still have the full panel, Ms. Argentine [phonetic],

1 remember, she raised her hand and said, everybody wants to know if  
2 there's a possibility it can go into next week. They know there's that  
3 possibility --

4 THE COURT: Yes.

5 MS. DIGIACOMO: -- but I think it's only fair to reiterate, yes,  
6 it looks like it's going to go into next week so that we don't keep  
7 somebody here for the next five days or four days if they have a plane to  
8 leave or something.

9 THE COURT: And --

10 MS. DIGIACOMO: I don't think anybody said that, but --

11 THE COURT: I don't think that was even proposed I said we  
12 were hoping it would be done Thursday or Friday.

13 MR. SPEED: Right.

14 THE COURT: Certainly Friday. Tomorrow isn't a full day,  
15 right? You have --

16 MS. DIGIACOMO: I have my Supreme Court argument.

17 THE COURT: Right. Thursday is full. I do have discovery  
18 conferences. How many does it say I have?

19 THE CLERK: Let me see, Your Honor. One.

20 THE COURT: Okay, so we really could start -- maybe I'll just  
21 get rid of that. I think I have to tell him it might and see what they say.  
22 I'd rather, and I'm sure they'd rather know now. If somebody has got  
23 tickets, I'm not going to tell them to throw out whatever airline tickets.

24 MR. SPEED: We're not, Judge, and until we know more, at  
25 this point, I think on Tuesday, announcing that we probably will not

1 finish this week is premature. Let's see how the rest of the witnesses go.  
2 It's the State's case, they are in the midst of their case and chief. We  
3 won't know what we are planning on doing until we see what the State  
4 has presented. So I think it --

5 THE COURT: How much longer do you have on cross? An  
6 hour at least, correct?

7 MS. MACHNICH: I have -- if she answered my questions,  
8 Your Honor --

9 MR. SPEED: Right.

10 MS. MACHNICH: -- I would be done in 20 minutes, but that's  
11 not been happening, so it's probably between 20 minutes and an hour.

12 MS. DIGIACOMO: And I'm going to --

13 MS. MACHNICH: I don't necessarily have that much.

14 MS. DIGIACOMO: I'm going to have redirect.

15 THE COURT: I get that.

16 MS. DIGIACOMO: And then we still have two more Spanish  
17 speakers through an interpreter that were going to testify, plus the  
18 doctor. Honestly, Your Honor --

19 THE COURT: I'm going to --

20 MS. DIGIACOMO: We're --

21 THE COURT: All right. I --

22 MS. DIGIACOMO: We're aware of --

23 THE COURT: I would want to know if I was a juror, and the  
24 biggest jury complaint is -- well, the biggest one is sitting and waiting.  
25 We don't have -- we're done with that, and not knowing, and so if I'm a

1 juror, I want to know. If they say nobody has got a problem at this point,  
2 then we know that's a great thing. And the other thing is, if we give it to  
3 them even midday Friday, I'm not going to rush, and you don't want  
4 them rushing to deliberation, so they may go into Monday. Who's going  
5 to want to stay Friday -- you know, if they go out at 5:00 on Friday. So  
6 I'm going to ask them, at least at this point, what are the plans, what -- I  
7 know I'd like to know, and now I told you, Monday is a very broken up  
8 day.

9 MS. MACHNICH: Your Honor, we would only request that it  
10 not be a question to them, that maybe it'd just be --

11 MR. SPEED: Right.

12 MS. MACHNICH: -- information to them at this point, and  
13 then we'll see if anything comes up, because we are very optimistic --

14 THE COURT: All right.

15 MS. MACHNICH: -- and also, we -- I don't think it's proper  
16 to --

17 THE COURT: I wish I was.

18 MS. MACHNICH: -- give them that.

19 THE COURT: On the other hand, I'm more right than wrong  
20 when it comes to attorneys taking more time than they tell me. It  
21 happens 90 percent of the time. Now, I will give you the caveat that  
22 criminal attorneys are better, but still, it's not -- whatever. Let's face it.  
23 You know, the attorneys talk, it's not a myth. All right.

24 Anything else outside the presence?

25 MR. SPEED: Then I would ask, Your Honor -- I think we're



1 close to settling this. I would ask that the Court only provide them with  
2 notice that we do anticipate going beyond Friday, perhaps.

3 THE COURT: And that's just what --

4 MR. SPEED: It's not definite.

5 THE COURT: -- she said. I --

6 MR. SPEED: All right, but --

7 THE COURT: Why are we repeating everything?

8 MR. SPEED: Well, but the Court was saying that he's -- it  
9 intended to ask them what their plans were because we're definitely  
10 going past.

11 THE COURT: I said I -- no. If I didn't say it, I agree. I'll do  
12 that now and we'll see what happens. They'll send us notes. All right.  
13 Anything else?

14 MS. DIGIACOMO: The State has something else.

15 THE COURT: All right. Go ahead.

16 MS. SUDANO: May I just inquire briefly, Your Honor, what  
17 time your appointment is on Monday before we forget?

18 THE COURT: 3:15.

19 MS. SUDANO: Okay, thank you, Your Honor. Just in case  
20 we needed --

21 THE COURT: Monday is a criminal morning. I've already put  
22 off one of them. Unless I can find a generous judge, it's not likely, so  
23 Monday is broken up pretty good.

24 MS. SUDANO: Thank you, Your Honor. And then the other  
25 thing that the State did just want to make a record of was going back to

1 the conversation that we were having yesterday about inconsistent  
2 statements and impeaching witnesses. The State does still believe that it  
3 was improper impeachment, that the witness needs to be confronted  
4 with the statement, afforded the opportunity to admit or deny it, and  
5 then they can either show her the statement to see if that refreshes her  
6 recollection or bring in the person who the statement was made to, if she  
7 denies it.

8 THE COURT: All right.

9 MS. SUDANO: That --

10 THE COURT: Thank you.

11 MS. SUDANO: That --

12 THE COURT: Anything else?

13 MS. SUDANO: Yes.

14 THE COURT: Go ahead.

15 MS. SUDANO: That said -- you know, we understand the  
16 court's ruling. We would just ask to have a continuing objection to the  
17 form of the impeachment in this case so that we don't have to continue  
18 to interrupt, and then we also are going to ask to revisit the issue of  
19 whether or not the State can go back and introduce those statements,  
20 but we can do that at a later time.

21 THE COURT: All right. As far as the impeachment, they have  
22 asked her. I don't think it's required that they read it verbatim, and then  
23 they are allowed to, under *Lobato* -- I think that was how you pronounce  
24 it -- they're allowed to impeach using the statement, so that was my  
25 decision. Anything else?

1 MS. SUDANO: And I would just note that *Lobato* dealt with  
2 the issue of extrinsic or impeachment on collateral matters through  
3 extrinsic evidence, and I --

4 THE COURT: We allowed it, and we don't even have  
5 extrinsic. We have the exact issue that's at hand, so it's even more  
6 strong.

7 MS. SUDANO: Right, which is why the State then does  
8 believe that under NRS 047.120, we get to bring those statements back  
9 in. That's consistent with the Crew [phonetic] case that I was citing  
10 yesterday, but again, we can address that --

11 THE COURT: I said --

12 MS. SUDANO: -- later.

13 THE COURT: -- they get to rebut it with statements that are --  
14 okay. We're just repeating ourselves. Thank you.

15 MS. SUDANO: Thank you, Your Honor.

16 MR. SPEED: Nothing from the Defense, Your Honor. Thank  
17 you.

18 THE COURT: Bring them in.

19 What time do you guys want to start tomorrow?

20 MS. DIGIACOMO: I thought you said 8:30, Your Honor.

21 THE COURT: That's fine.

22 MS. DIGIACOMO: But the question was, were we going to  
23 come back after my argument between like 3 and 5, or are we just going  
24 to go straight through until like 1?

25 MS. MACHNICH: Perhaps until 1 and then 3:00.

1 THE COURT: We'll talk about it.

2 THE MARSHAL: Please rise for the jury.

3 [Jury in at 10:46 a.m.]

4 [Inside the presence of the jury]

5 THE COURT: You know what? What happened? We're  
6 going to move you over two seats so everybody can see.

7 THE MARSHAL: All right. Judge, I was going to do it  
8 afterwards. It's easier when they're already in place.

9 THE COURT: Do it now.

10 THE MARSHAL: Okay.

11 THE COURT: Do it now.

12 THE MARSHAL: Everybody get to your normal seats, when  
13 you get there. Okay. Pick up your notebooks and pens.

14 THE COURT: All right.

15 THE MARSHAL: The back seat, or the back row, move over  
16 two.

17 THE COURT: There you go. Be seated.

18 THE MARSHAL: The front row move over two. Okay. Now,  
19 verify you have your notebook. That you have the correct notebook.

20 THE COURT: All right. Good morning, ladies and  
21 gentlemen.

22 JURORS: Good morning.

23 THE COURT: In the interest of attempting to keep you as  
24 fully informed as I can, you inquired regarding timing. I cannot tell you  
25 that -- and I know this is, again, crystal ball -- is there a possibility we will

1 go through Monday? And the answer is maybe. Just like -- so that's  
2 pretty much all I know. We're going to start tomorrow at 8:30. We have  
3 -- I got somebody to take my morning calendar. We're going to go all  
4 the way through. We'll take a lunch. Of course, and we may go until --  
5 depending on who's on the stand or whatever, we may go until 5:30. So  
6 that's where we are.

7 And parties acknowledge presence of the jury? Did I ask  
8 that?

9 MS. DIGIACOMO: No, you didn't, but yes, we do, Your  
10 Honor.

11 MR. SPEED: We do, Your Honor. Thank you.

12 THE COURT: Thank you. Steve [phonetic], Ms. Moran was  
13 on the stand?

14 THE MARSHAL: Yes, Judge.

15 THE COURT: Thank you.

16 [Pause]

17 THE MARSHAL: Watch your step.

18 THE CLERK: Please raise your right hand.

19 MEILY MORAN, STATE'S WITNESS, SWORN

20 THE CLERK: Please be seated, and please state your first and  
21 last name for the record.

22 THE WITNESS: Meily Moran.

23 THE CLERK: Thank you.

24 THE COURT: Defense, you're inquiring.

25 MS. MACHNICH: Thank you, Your Honor.

1 CROSS-EXAMINATION CONTINUED

2 BY MS. MACHNICH:

3 Q All right. Meily, good morning.

4 A Good morning.

5 Q All right. So I'm going to try to start where I left off  
6 yesterday. All right. And just to direct your attention right now, where  
7 we left off was your conversation with Ms. Espinoza on July 12th, 2016,  
8 okay?

9 A Okay.

10 Q All right. And so you were asked by Ms. Espinoza to tell her  
11 everything about the abuse, correct?

12 A Yes.

13 Q Okay. And among other things, you told her that it happened  
14 every single week or month?

15 A I don't remember that.

16 Q Okay. So you recall speaking with Ms. Espinoza on July  
17 12th, 2016?

18 A Yes.

19 Q You recall being asked questions and giving answers about  
20 the allegations that you had made?

21 A Yes.

22 Q Okay. And this was the same day that police were called?

23 A Yes.

24 Q Okay. And at that time, you were aware that the interview  
25 was being recorded?

1 A Yes.

2 Q And at that time, in relevant part, you stated --

3 MS. DIGIACOMO: Objection -- or excuse me. Can I get a  
4 page, counsel?

5 MS. MACHNICH: Five.

6 MS. DIGIACOMO: Thank you.

7 BY MS. MACHNICH:

8 Q In relevant part, you stated, "And this keep happening like  
9 every single week or month", correct?

10 A I think so.

11 Q Thank you. All right. In reference to -- let me see here.  
12 Commentary by the State. In reference to -- let me see here. You also  
13 discussed the claim with regard to the vaginal -- the insertion of his  
14 finger in your vagina, correct?

15 A Yes.

16 Q Okay. And when you were asked, generally by Ms. Espinoza,  
17 to tell her what happened, you said that he touched you in your private  
18 parts, but you didn't remember what day; is that correct?

19 A Yes.

20 Q Okay. And then as the interview progressed, Ms. Espinoza  
21 started asking you more specific questions and following up, correct?

22 A Yes.

23 Q Okay. In reference to the situation with the rubbing in your  
24 vaginal area that you said happened around August 2015, you told her --

25 MS. DIGIACOMO: Page, counsel?

1 MS. MACHNICH: Twenty-one.

2 BY MS. MACHNICH:

3 Q -- that it happened when you were seated on the couch,  
4 correct?

5 A Can you repeat that, again, please?

6 Q In reference to the touching in August 2015, you remember  
7 that allegation?

8 A Oh, yes.

9 Q Yes. And you said to Ms. Espinoza that it happened when  
10 you were seated on the couch?

11 A Yes.

12 Q Okay. At no point to Ms. Espinoza did you mention him  
13 asking you to sit on his lap?

14 A I don't remember that.

15 Q You don't recall if you ever mentioned sitting on his lap or  
16 you don't recall what?

17 A Can you repeat that, again, please?

18 Q Yes. At no point in your conversation with Ms. Espinoza, and  
19 what would be 40 pages of transcript, did you mention him asking you to  
20 sit on his lap or you sitting on his lap?

21 A I did mention that.

22 Q You mentioned that to Ms. Espinoza?

23 A Yes.

24 Q Okay. Now, directing your attention to the incident with the  
25 vaginal penetration, okay?



1 A Yes.

2 Q Okay. You talked about him inserting his finger into your  
3 vagina?

4 A Yes.

5 Q Okay. She asked you where he put his finger, and you said  
6 you didn't know?

7 MS. DIGIACOMO: Page?

8 MS. MACHNICH: Eleven.

9 THE WITNESS: I didn't know the certain place, but I knew it  
10 was inside.

11 MS. MACHNICH: Okay.

12 BY MS. MACHNICH:

13 Q And here in court, you've now specified what area of your  
14 body that was?

15 A Yes, because you told me to describe it.

16 Q Okay. And when you described it to Ms. Espinoza, she asked  
17 you where he put his finger, and you said you didn't know?

18 A I said somewhere inside. I didn't know the place.

19 Q Okay, thank you. Now, also referencing that same incident,  
20 you told her that Gustavo grabbed you by the hair?

21 MS. MACHNICH: Page 10.

22 MS. DIGIACOMO: Thank you.

23 THE WITNESS: Yes.

24 BY MS. MACHNICH:

25 Q Okay. You told her that he grabbed you by force?

1 MS. MACHNICH: Page 13.

2 THE WITNESS: Yes.

3 BY MS. MACHNICH:

4 Q That he threw you on the bed?

5 MS. MACHNICH: Page 14.

6 THE WITNESS: I don't remember that.

7 MS. MACHNICH: Okay.

8 BY MS. MACHNICH:

9 Q All right. In describing -- and again, do you recall giving that  
10 statement to Ms. Espinoza on July 12th?

11 A I believe so.

12 Q Okay. All right. So you stated to Ms. Espinoza in  
13 questioning about that --

14 MS. DIGIACOMO: Page? Page?

15 MS. MACHNICH: Page 14, still.

16 MS. DIGIACOMO: Thank you.

17 BY MS. MACHNICH:

18 Q -- that specifically, he threw me on the bed, pulled down my  
19 pants and the shorts, and he pulled down my underwear, correct?

20 A I think so.

21 Q Thank you. All right. And in your 40 pages of transcript with  
22 Ms. Espinoza, you never mentioned using your period as an excuse to  
23 dissuade him from that contact?

24 A I don't remember.

25 Q Okay.

1           A     It's been a long time. I don't remember what I said.

2           Q     Fair enough. Now, up to that point in your statement to Ms.  
3 Espinoza, so for the first -- at least through a good third of your  
4 conversation with Ms. Espinoza, you never claimed that Gustavo used  
5 his mouth near your vaginal area, correct?

6           A     I believe I did. I told her.

7           Q     Well, you never told her before she started asking specific  
8 questions regarding what touched your vagina, correct?

9           A     I don't remember.

10          Q     Okay, that's fair.

11               MS. MACHNICH: So page 17.

12 BY MS. MACHNICH:

13          Q     Ms. Espinoza specifically asked you what part of his body  
14 besides his fingers touched your body; do you recall that?

15          A     Yes.

16          Q     Okay. And your response:

17          "A     His mouth. He began kissing my part.  
18 Yes.

19          Q     All right. And at no point before her asking you what part of  
20 his body besides his fingers touched your body had you mentioned him  
21 putting his mouth in your vaginal area?

22          A     Like I said, I don't remember. It's been too long.

23          Q     Okay. So let's talk about the timing of some of these  
24 incidents. And I just want to make sure I recall what you testified to  
25 yesterday. Yesterday on direct examination, you said that the July 11th

1 incident, the one that happened immediately -- the day before police  
2 were called, was the incident with the vaginal insertion and his mouth on  
3 your vagina, correct?

4 A Yes.

5 Q Okay. And you stated that that happened July 11th and the  
6 same day as the vaginal insertion and mouth on your vagina, you told  
7 your mother that same day?

8 A Yes.

9 Q Okay. And similarly, when discussing the incident of the  
10 kiss, which it's fair to say those were two separate incidents, correct?

11 A Yes.

12 Q Okay. And they were separated by at least a couple of  
13 weeks?

14 A Yes.

15 Q And your testimony yesterday was that the incident with the  
16 kiss happened prior to the incident with the insertion into your vaginal  
17 and oral contact?

18 A What does prior mean?

19 Q Before.

20 A Oh, okay. Yes.

21 Q All right, thank you. So going back to your conversations  
22 with Ms. Espinoza, page 28, when asked about -- she asked you about  
23 the timing of the kiss, correct?

24 A I believe so.

25 Q Yes. And you told her:

1 "A No. Only yesterday he grabbed me by force from the face  
2 and gave me a kiss.

3 Correct?

4 A I don't recall saying that.

5 Q Okay. Similarly --

6 MS. MACHNICH: Twenty-nine.

7 BY MS. MACHNICH:

8 Q -- you were asked about when the kiss by force happened,  
9 correct?

10 A Yes.

11 Q And you said yesterday, correct?

12 A Yesterday indicating the day before he was arrested?

13 Q You said yesterday?

14 A I need you to clarify which yesterday.

15 Q Meily, this is your statement. So I'm asking you, do you  
16 recall telling Ms. Espinoza that the kiss by force happened yesterday.

17 A I believe so.

18 Q You believe you told her that, yes?

19 A Like I said, I don't remember.

20 Q Okay. So you recall giving that statement to Ms. Espinoza?

21 A I don't remember.

22 Q You recall giving a statement to Ms. Espinoza?

23 A Oh, that, yes.

24 Q Yes. On July 12th --

25 A Yes.

1 Q -- 2016? Yes?

2 A Yes.

3 Q And it was a recorded statement?

4 A Yes.

5 Q Okay. And you were asked the following question, and gave  
6 the following answer:

7 "Q Okay. When you say a kiss by force, when did that happen?

8 MS. DIGIACOMO: What page are you on?

9 MS. MACHNICH: Twenty-nine, still.

10 BY MS. MACHNICH:

11 Q "Q Okay. When you say a kiss by force, when did that  
12 happen?

13 "A Yesterday.

14 Correct?

15 A I think so.

16 Q Thank you. All right. Now, let's also briefly discuss while  
17 we're on this statement, your -- I won't say allegation -- your statement  
18 about what happened in February 2016. Do you recall discussing that  
19 yesterday with Ms. DiGiacomo?

20 A Who is Ms. DiGiacomo?

21 Q The State.

22 A Oh, yes.

23 Q Okay. So you discussed a conversation with Gustavo in  
24 February of 2016, yes?

25 A Yes.

1 Q Okay. And yesterday, you stated that this conversation  
2 occurred in the car on the way to buy a baby seat or a car seat, correct?

3 A Yes.

4 Q Okay. And you recall telling Ms. Espinoza that the February  
5 conversation happened in your apartment?

6 MS. DIGIACOMO: Page?

7 MS. MACHNICH: Twenty-seven.

8 BY MS. MACHNICH:

9 Q Correct?

10 A There was two incidents. You're confusing me.

11 Q Okay. So it's your testimony right now that you're not  
12 recalling telling her that the February conversation occurred in the  
13 apartment; is that correct?

14 A I told her one yesterday, but it wasn't in February. I don't  
15 remember the date.

16 Q So it's your testimony now that you did not have a  
17 conversation with Gustavo in February?

18 MS. DIGIACOMO: Objection, Your Honor. She's misstating  
19 what she's saying.

20 MS. MACHNICH: That's not accurate. I --

21 THE COURT: Ask her. Go ahead. Overruled.

22 BY MS. MACHNICH:

23 Q On direct examination, you discussed with the State a  
24 conversation you had with Gustavo right after the birth of your youngest  
25 brother; do you recall that?

1 A Yes.

2 Q Okay. And your brother, your youngest brother, was born on  
3 or about February 22nd or 23rd, 2016, correct?

4 A Yes.

5 Q And the statement that you discussed with the State  
6 yesterday on direct examination you said occurred within a day or two of  
7 when your brother was born, correct?

8 A Yes.

9 Q Okay. So that would be February 2016, correct?

10 A Yes.

11 Q Okay. And do you recall yesterday stating that that  
12 conversation with Gustavo occurred in the car?

13 A Yes.

14 Q Okay. But when you spoke with Ms. Espinoza in July 2016,  
15 you told her that the February conversation occurred in the apartment  
16 where you lived?

17 A Well, there was two conversations.

18 Q So now there's another conversation, correct?

19 A Yes.

20 Q Okay. And that's not a conversation we discussed  
21 yesterday?

22 A No.

23 Q There's a second conversation now?

24 MS. DIGIACOMO: Objection, Your Honor. Argumentative.

25 MS. MACHNICH: Your Honor, I'm trying to clarify.



1 MS. DIGIACOMO: Testified to two yesterday.

2 MS. MACHNICH: She did not.

3 THE COURT: Counsel, have I said you don't talk to each  
4 other? Overruled. Ask the question.

5 BY MS. MACHNICH:

6 Q So now you're saying that there was another conversation in  
7 February 2016?

8 A Like I said, I don't remember the date.

9 Q Okay. You recall telling Ms. Espinoza that there was a  
10 conversation in February 2016, correct?

11 A Yes.

12 Q And that it occurred after your brother, your youngest  
13 brother, was born?

14 A Yes.

15 Q Within one or two days, correct?

16 A Yes.

17 Q Yes. And you recall telling her that that conversation  
18 happened in an apartment where you lived?

19 A I don't know. I don't remember.

20 Q Okay. When you were speaking with Ms. Espinoza --

21 MS. MACHNICH: The context for this is on 25, and it  
22 continues through 27. Let's see. All right.

23 BY MS. MACHNICH:

24 Q So you recall speaking with Ms. Espinoza July 12th, 2016?

25 A Yes.

1 Q You recall that that was a recorded interview at that time?

2 A Yes.

3 Q Okay. And she was discussing with you the February  
4 conversation. The same day when you told me after your mom had the  
5 baby, to give context. And you were asked the following question and  
6 gave the following answer.

7 MS. MACHNICH: And this is 27, counsel.

8 MS. DIGIACOMO: Thank you.

9 BY MS. MACHNICH:

10 Q You were asked the following question:

11 "Q Okay. And where did this happen?

12 "A In the apartment where we lived --

13 MS. DIGIACOMO: "In the apartment where we lived before",  
14 Your Honor.

15 MS. MACHNICH: Before.

16 MS. DIGIACOMO: So I object.

17 MS. MACHNICH: "In the apartment where we lived before."

18 THE COURT: If you're asking, you have to read the entire  
19 answer.

20 MS. MACHNICH: I apologize. I missed the last word. I will  
21 restate for the witness so she can answer and clarify for the record.

22 BY MS. MACHNICH:

23 Q You were asked the following question:

24 "Q Okay. And where did this happen?

25 "A In the apartment where we lived before.

1 Correct?

2 A Yes.

3 Q Okay. And to follow up on that, you were also asked:

4 "Q Okay. You're saying he approached you face to face?

5 "A Yes.

6 "Q And that your brother came in and then he left? Which  
7 brother came in?

8 "A The 12-year-old one.

9 Do you recall that conversation?

10 A I don't remember that one.

11 MS. MACHNICH: It was still on 27.

12 BY MS. MACHNICH:

13 Q All in reference to the February conversation in the  
14 apartment?

15 A I think so.

16 Q Thank you. All right. All right. Let's move on to the  
17 statement you gave at preliminary hearing. All right. You recall  
18 testifying at a preliminary hearing in this case?

19 A Yes.

20 Q Okay. And there, you were asked questions by lawyers,  
21 correct?

22 A Yes.

23 Q Okay. And there was a different judge?

24 A Yes.

25 Q Okay. Now, at that time, you discussed your -- what you now

1 said happened in August 2015; do you recall that?

2 A Yes.

3 Q Okay. At no point did you mention Gustavo asking you to sit  
4 on his lap?

5 A I don't remember that.

6 Q Are you saying that you said it or that you did not say it?

7 A I believe I said it.

8 Q Okay. All right. And you also are now saying, it is now your  
9 testimony that you said at preliminary hearing that you sat on his lap?

10 A Like I said, I think I said it. I'm not sure.

11 Q Okay.

12 MS. MACHNICH: Court's brief indulgence.

13 BY MS. MACHNICH:

14 Q All right. Let me see here. Now, directing your attention to  
15 the claim with the digital penetration and the putting his mouth on your  
16 vagina, you also discussed that at the preliminary hearing, correct?

17 A Yes.

18 Q Okay. And at no point did you mention Gustavo removing  
19 his pants?

20 A I don't remember.

21 Q Okay. And at no point did you mention him exposing his  
22 penis to you?

23 A I believe I said that.

24 Q And it's now your testimony that you said that at some point  
25 during the preliminary hearing?

1           A     Yes.

2           Q     Okay. All right. Now, let's talk about timing. Let's first start  
3 with the kiss, okay?

4           A     Yes.

5           Q     Thank you. Now, in discussing the kiss, during preliminary  
6 hearing, you said that you immediately called your mom and told her  
7 everything that happened after the kiss?

8           A     I don't recall saying that.

9           Q     All right. Directing to your attention to the preliminary  
10 hearing. You recall testifying at a preliminary hearing on September  
11 30th, 2016?

12          A     Yes.

13          Q     Okay. And as we previously stated, there were lawyers and  
14 judges present?

15          A     Yes.

16          Q     Okay. And you were under oath, correct?

17          A     Yes.

18          Q     Just like you are today?

19          A     Yes.

20          Q     All right. And you were asked the following questions and  
21 gave the following answers with regard to the kiss.

22                 MS. MACHNICH: And this is page 14 and 15 of the  
23 preliminary hearing transcript, counsel.

24           "Q     At any point did he touch you?

25           "A     He kissed me.

1 "Q When you say he kissed you, what part of his body touched  
2 which part of your body?

3 "A His mouth and his tongue touched my mouth.

4 "Q Was your mouth open or closed?

5 "A Closed.

6 "Q Was his mouth opened or closed?

7 "A Open.

8 "Q At some point, did you tell your mom what was going on?

9 "A Yes.

10 "Q When?

11 "A After he left the house, I immediately called my mom and  
12 told her everything that happened.

13 "Q Was it that same day, July 11th?

14 "A Yes.

15 "Q Do you know if your mom ever called the police?

16 "A Yes, she called the police the next day.

17 Do you recall that testimony at preliminary hearing?

18 A I don't remember.

19 Q You don't remember testifying at preliminary hearing?

20 A I do remember that. I just don't remember what I said.

21 Q All right. Would you have any reason to contest what I have  
22 just read as being a true and accurate statement of what occurred on  
23 September 30th, 2016 as part of your testimony?

24 A What does contest me?

25 Q You would have no reason to say what I read is untrue?

1 A Yes.

2 Q I guess maybe that wasn't a great question. Are you saying  
3 what I had just read was not a statement that you made?

4 A I don't remember.

5 Q Okay. And in reference to the incident concerning the digital  
6 penetration and mouth on your vagina, do you recall telling the Court at  
7 the preliminary hearing that that incident occurred in June of 2016?

8 MS. DIGIACOMO: Page, please?

9 MS. MACHNICH: Eight.

10 MS. DIGIACOMO: Thank you.

11 MS. MACHNICH: And nine.

12 THE WITNESS: Can you repeat that, again, please?

13 MS. MACHNICH: Of course.

14 BY MS. MACHNICH:

15 Q Do you recall when you testified previously that you told the  
16 Court that the incident where he put his mouth on your vagina occurred  
17 in June of 2016?

18 A I don't recall that. I believe I said either June or July.

19 Q Okay. So it's your testimony that the conversation about --

20 MS. MACHNICH: Well, strike that.

21 BY MS. MACHNICH:

22 Q You recall testifying at preliminary hearing on September  
23 30th, 2016?

24 A Yes.

25 Q You were under oath at that point, just like you are today?

1           A     Yes.

2           Q     There were lawyers and a judge present?

3           A     Yes.

4           Q     All right. And you were asked the following question and  
5 gave the following answer:

6           "Q     I want to jump ahead now to June of 2016. Did something  
7 happen with your stepdad in June of 2016 that made you feel  
8 uncomfortable?

9           "A     Yes.

10          "Q     And in reference to the same incident, did your stepdad do  
11 something that made you feel uncomfortable?

12          "A     Yes.

13          "Q     Which part of his body touched which part of your body?

14          "A     His mouth and hands touched my vagina.

15          Do you recall that testimony from your preliminary hearing  
16 testimony in September of 2016?

17          A     I don't remember that.

18          Q     Okay. Do you have any reason to believe that what I just  
19 stated is an incorrect statement of your testimony at that time?

20          A     No. I -- you're confusing me.

21          Q     Okay. We'll move on. All right. Now, next I want to speak  
22 with you just briefly about your testimony before the family court on  
23 February 21st, 2017. Specifically, I'd like to --

24                 MS. DIGIACOMO: Your Honor, may we approach?

25                 THE COURT: Yes.



1 [Sidebar begins at 11:16 a.m.]

2 MS. DIGIACOMO: Your Honor, I would like to inquire if they  
3 have a transcript of those proceedings, because when we did a court  
4 order to try and get the family court records and the testimony, it was  
5 denied by Your Honor, so I would like to know if they have it because the  
6 State does not.

7 MR. SPEED: The family court records weren't denied. The  
8 State submitted an ex parte order for the production of family court  
9 records and Judge Cory granted that order and disclosed both sides --  
10 disclosed to both sides the family court record.

11 MS. DIGIACOMO: That is news to me.

12 MR. SPEED: I've got a copy of it.

13 MS. DIGIACOMO: The State has never received anything  
14 from that family court proceeding, so I would ask that they --

15 THE COURT: Let's see the order.

16 MS. DIGIACOMO: -- provide it.

17 THE COURT: Judge Corey?

18 MR. SPEED: Yes.

19 THE COURT: Here? Did order --

20 MR. SPEED: Yes, he presided over the trial. He can explain,  
21 Your Honor. It was his case in department one.

22 MS. DIGIACOMO: But we tried again in December and it was  
23 denied.

24 THE COURT: What trial?

25 MR. SPEED: This trial. This case. I'm saying this case. This

1 case was formally in department one.

2 THE COURT: No, but you said there was another trial?

3 MS. MACHNICH: Oh, no, no, no, no.

4 MR. SPEED: A court trial.

5 THE COURT: Well, Corey didn't preside over it.

6 MR. SPEED: No.

7 THE COURT: All right. Show me the order. I don't know  
8 what you guys are talking about, but go ahead.

9 MR. SPEED: This might take a minute, Your Honor. If you  
10 want to have them stretch because --

11 THE COURT: All right.

12 MR. SPEED: -- I have to look through things.

13 THE COURT: We'll be gone for -- well, we're almost an hour.  
14 All right. We'll take a short recess.

15 MR. SPEED: Thank you.

16 [Sidebar ends at 11:17 a.m.]

17 THE COURT: All right, ladies and gentlemen, we're going to  
18 take a 10 minute recess. During this recess, you're admonished do not  
19 talk or converse amongst yourselves or with anyone else on any subject  
20 connected to this trial or read, watch, or listen any report of or  
21 commentary on the trial or any person connected with this trial by any  
22 medium of information. Including, without limitation, newspaper,  
23 television, radio or internet. Do not form or express any opinion on any  
24 subject connected with the trial until the case is finally submitted to you.  
25 We'll take 10 minutes.

1 THE MARSHAL: Rise for the jurors.

2 [Jury out at 11:18 a.m.]

3 [Outside the presence of the jury]

4 THE MARSHAL: Please be seated. All right. We're on the  
5 record outside the presence. By the way, I don't think the State --

6 MS. DIGIACOMO: Your Honor, can we excuse the  
7 witnesses?

8 THE COURT: Well, the State -- nobody explain that the  
9 interpreter is there to assist her. And we either need to -- I think we  
10 should do it, so the jury understands. You had said you were going to  
11 do that, and I don't remember it happening, so.

12 MS. MACHNICH: Your Honor, I'm happy to do it as soon as  
13 we start again.

14 THE COURT: Okay. So, now you can go ahead and go to the  
15 empty room.

16 THE MARSHAL: Judge, at least three of the witnesses, or  
17 excuse me, jury members have written notes to give me and I gave them  
18 the instruction to wait until after the witness is finished.

19 THE COURT: Are those questions or?

20 THE MARSHAL: I mean questions. Wait until after the  
21 witness finishes and then the Judge will ask you if we have any  
22 questions, so just hold your notes until then. I don't know if that  
23 instruction was given or not.

24 THE COURT: I think I said that, but anyway. Okay, so there  
25 was a family court proceeding regarding what?

1 MS. DIGIACOMO: Custody.

2 MR. SPEED: Child custody, Your Honor.

3 THE COURT: And Judge Cory had signed an order to turn  
4 over the transcript of that, which by the way they generally don't do  
5 transcripts in family court.

6 MS. DIGIACOMO: No, they do the video.

7 THE COURT: They do a -- they hand you a DVD or maybe  
8 now it's on flash drive. But anyway, so what's that about?

9 MR. SPEED: Let me clear everything up for you, Your Honor.  
10 I believe that I can. I've located all our court filings, orders, subpoenas,  
11 et cetera.

12 THE COURT: Okay.

13 MR. SPEED: In March of 2017 -- and may I approach?

14 THE COURT: Yes.

15 MR. SPEED: I've got a copy of our signed, filed order for  
16 discovery from Judge Cory. There was some question about which  
17 district court presided over the case.

18 THE COURT: Have you seen this, State?

19 MS. DIGIACOMO: No.

20 MR. SPEED: File stamp I believe that is 10 March 2017, Your  
21 Honor.

22 THE COURT: Correct.

23 MR. SPEED: Now in ruling --

24 THE COURT: I'm trying to do this real quick.

25 MR. SPEED: Certainly. Now in arguing our motion --

1 THE COURT: I didn't see anything about transcript.

2 MR. SPEED: In arguing our motion for discovery, in arguing  
3 in opposition to our motion for discovery, as is the State's customary  
4 practice, I believe the Chief Deputy District Attorney at that time was Ms.  
5 Amy Berrera [phonetic]. She made the argument that it is not the State's  
6 job to do our investigative work. So, for all of the items of discovery that  
7 we were seeking or requesting in our motion where the Court denied  
8 those requests, we were instructed further to subpoena anyone from  
9 whom we believed we could receive or obtain the information sought in  
10 the motion.

11 In doing that, the Public Defender issued the following  
12 subpoena or the subpoena I'm about to show to the Court, to the family  
13 court clerk, the custodian or records at 610 North Baker. May I  
14 approach?

15 THE COURT: Yes. Okay.

16 MR. SPEED: In response to that subpoena, Your Honor, we  
17 were provided with a compact disc. The Court can see the CD case on  
18 top of the subpoena. After reviewing the contents of that CD, we learned  
19 that there were a number of proceedings in the 8th Judicial District Court  
20 Family Division pertaining to our client and the custody situation  
21 involving all four of the children that he shared with Ms. Cassias Ortiz.  
22 Also, --

23 MS. DIGIACOMO: He only shared two.

24 MR. SPEED: The four children who lived in the residence  
25 that they shared.

1 THE COURT: Okay. Go on.

2 MR. SPEED: Also, in addition to minutes, orders, case plans,  
3 there were references to a family court trial that occurred in February of  
4 2017. In preparation for our case, we learned that the complainant, the  
5 witness on the witness stand currently in this case, also gave testimony  
6 in the family court trial pertaining to the allegations of sexual abuse  
7 against our client. And we subpoenaed the family court once again for a  
8 trial transcript or the JAVS recordings of those proceedings. We were  
9 informed by the records and video production office of the District Court  
10 that the Court does not produce or disseminate JAVS recordings.  
11 However, if the presiding judge who presided over the family court  
12 proceedings were to sign an order, then they would be able to produce a  
13 transcript of the trial or a CD, a recording of the trial.

14 That is when we asked Judge Teuton, the presiding judge in  
15 the family court proceedings to execute the order that I'm about to show  
16 to the Court. May I approach?

17 THE COURT: Yes.

18 MR. SPEED: When we contacted the records department or  
19 the video reproduction department of the District Court, we were  
20 informed that this Court, or Department 28, and I apologize for the  
21 informality, Your Honor, could not execute an order that would allow  
22 them to reproduce the records that we needed. It had to be from the  
23 Court that presided over the proceedings in the family division. The  
24 Court saw, and I'll state for the record, the Court saw that this order was  
25 executed by Judge Teuton?

1 THE COURT: Yes.

2 MR. SPEED: After filing this executed order, duly served,  
3 properly executed, by --

4 THE COURT: Served on who?

5 MR. SPEED: We received a CD of the trial transcript.

6 THE COURT: Served on who?

7 MR. SPEED: Served on the --

8 THE COURT: When you say served.

9 MR. SPEED: Served on the records division.

10 THE COURT: Okay.

11 MR. SPEED: They require the order before they would  
12 reproduce the records and disseminate them to us.

13 THE COURT: All right.

14 MR. SPEED: After that, we received a CD rom of the family  
15 court proceedings and then had those proceedings rendered to a written  
16 transcript.

17 THE COURT: Okay.

18 MR. SPEED: And if the State wants a copy of those, we  
19 certainly have on available.

20 THE COURT: State.

21 MS. DIGIACOMO: Well, Your Honor, we tried to do this  
22 process too, but didn't have as good as luck as the Defense did. We  
23 would ask that they turn it over now, but we would need that video in  
24 order to be able -- we would need to review it to make sure that their  
25 transcript is accurate because they're not using an official document to

1 impeach her. We tried this process. We went to Judge Teuton. Judge  
2 Teuton referred us back to this Court. We tried with this Court and got  
3 denied. We were never able to obtain these records such as they've  
4 done. And just for the record, prior to going into trial, they have turned  
5 nothing to us.

6 So, I didn't even know, even during the file review, I didn't  
7 even know that they had this. It was our understanding we couldn't get  
8 it. So, I would ask for time now to be able to review it and to review their  
9 transcript to see if it's accurate.

10 MR. SPEED: We have a sealed copy of the transcript that  
11 was produced by Lawyers Solutions Group and I can provide that to the  
12 Court if that's necessary. But in preparation for today's examination, we  
13 did make a copy of the family court proceedings that I'm showing to the  
14 State. If I may approach?

15 THE COURT: Yes. So, this was regarding the hearing and  
16 you're saying you gave them a copy of this?

17 MS. DIGIACOMO: No. No, we've been provided with  
18 nothing until this moment.

19 THE COURT: And you have a transcript, not done by the  
20 court. Done by a private company?

21 MR. SPEED: No. The JAVS recording was produced by the  
22 Court.

23 THE COURT: Yes.

24 MR. SPEED: We had somebody transcribe the recording.

25 THE COURT: And I believe that all of this, not that it's -- now,



1 under the new rules regarding subpoenas, you can't be one sided. In  
2 other words, you have to get permission from the other side.

3 MR. SPEED: May I approach, Your Honor?

4 THE COURT: Certainly, it applies -- yes. Certainly, it applies  
5 in civil cases and I don't see why it won't apply in criminal cases. And  
6 that's new under the rules. But in any event, I think they certainly have  
7 the right to check the authenticity. It wasn't -- as you know, when we do  
8 a transcript, it's done by the court. So it's, if you will, and I don't know if  
9 it's certified.

10 MR. SPEED: We submitted --

11 MS. DIGIACOMO: We submitted the record.

12 MR. SPEED: Your Honor, we submitted an order for the  
13 transcript as well. But we were informed by the records reproduction  
14 office in the District Court, who I would add shares facilities with the  
15 District Attorney's Office. Their offices are in the Clark Building. We  
16 were informed that it would take more than 14 business days to have the  
17 transcripts produced or certainly we would have done that. What we  
18 have is all that we were able to obtain with trial starting on Tuesday at  
19 10:30 and that is the CD. And we were able to rush and get the CD  
20 transcribed.

21 THE COURT: Fine, but I'm giving them time to view the CD.  
22 And certainly, you never disclosed it until just now.

23 MR. SPEED: We didn't have to disclose it, Your Honor. This  
24 is cross-examination and it is in the constructive possession of the State.  
25 We asked the Court for --

1 THE COURT: What's in constructive possession of the State?

2 MR. SPEED: All of the records from the 8th Judicial District  
3 Court, the family court proceedings. That is how these issues are settled  
4 in criminal cases, Your Honor. These items are deemed to be in the  
5 constructive possession of the District Attorney or any government  
6 agent.

7 MS. DIGIACOMO: Not --

8 THE COURT: I'm not sure family court -- I'd have to disagree  
9 with that.

10 MS. DIGIACOMO: Right. Family court is a different entity.  
11 It's not an investigating agency.

12 THE COURT: Let alone, they yeah. All right. What else? I'm  
13 giving them time to review it.

14 MR. SPEED: And that's fine, Your Honor.

15 THE COURT: To check the transcript.

16 MR. SPEED: That's fine.

17 THE COURT: And I assume that's going to take a couple of  
18 hours.

19 MS. DIGIACOMO: Correct.

20 THE COURT: How long is the actual testimony?

21 MR. SPEED: Oh, I'm not sure. I've been reading the  
22 transcript. And a lot of that depends on -- a lot of what Ms. Moran,  
23 young Ms. Moran recalls at this point, will depend on what she chooses  
24 to recall.

25 THE COURT: That isn't what I asked. If you look on the first

1 page it says when it started, the time. If you look on the last page it  
2 should say when it's over.

3 MS. DIGIACOMO: It doesn't appear that they did that, Your  
4 Honor.

5 MR. SPEED: Right.

6 MS. DIGIACOMO: They didn't put times.

7 THE COURT: They didn't do that on this? All right. Any  
8 guess? How many pages is it?

9 MS. DIGIACOMO: It's 63.

10 MR. SPEED: Relatively short in our opinion.

11 MS. DIGIACOMO: 63, that's --

12 THE COURT: All right. How long --

13 MR. SPEED: It's under an hour, Your Honor. It's less than 60  
14 minutes in the video. She was on the witness stand. She was directly  
15 examined by a --

16 THE COURT: That's what you intend to go to next?

17 MR. SPEED: Yes.

18 MS. DIGIACOMO: Yes.

19 MR. SPEED: There was a Deputy District Attorney directly  
20 examining her. She was cross-examined. The guarantees of reliability  
21 are all present. And again --

22 THE COURT: There's a Deputy District Attorney examining  
23 her in family court?

24 MR. SPEED: Yes.

25 MS. DIGIACOMO: So, this is not really what --

1 MR. SPEED: Yes. Yes, it was. It was a Deputy District  
2 Attorney directly examining her because the issue of custody or Mr.  
3 Gunera-Pastrana's fitness as a part was the issue before Judge Teuton.  
4 And in those proceedings, testimony from Meily was given to -- well, she  
5 made her sexual abuse allegation at that time.

6 MS. DIGIACOMO: Your Honor, this appears to be a CPS  
7 hearing regarding the allegations. This is not a family court proceeding  
8 where custody was an issue. And this is referenced in the CPS records  
9 that this hearing was held regarding the safety plan and whether or not  
10 the Defendant should have access to the kids, but this is a CPS  
11 proceeding, which I am still again floored that they were able to get this  
12 with a subpoena where we were required to get a court order. So, it's  
13 not a custody family court hearing. It's a family court hearing for CPS.  
14 There's a difference.

15 MR. SPEED: So that our record is clear, we were required to  
16 obtain a court order just like I imagined the State said that they were, so  
17 we didn't just receive the transcript based on our subpoena. We  
18 received the minutes, the orders, copies of case plans, et cetera in  
19 response to our subpoena. It was only after reviewing what we received  
20 in response to our subpoena that we learned that there was a full on trial  
21 where witnesses were subject to direct and cross-examination that we  
22 were able to learn that there were proceedings where Meily, our  
23 complainant in this case, gave testimony relating to her allegations of  
24 sexual abuse against our client.

25 MS. DIGIACOMO: And, Your Honor, it's not a trial. Just so

1 we're clear, it is not a trial. It is a hearing. It's even captured as a  
2 hearing. But again, I'm at a loss until I see the video.

3 THE COURT: And so, it's clear this isn't a quote on quote  
4 family court trial.

5 MR. SPEED: Family court hearing.

6 THE COURT: This was a hearing in front of -- well, let me see  
7 it then, for CPS.

8 MS. DIGIACOMO: That's correct. It's captioned here and it  
9 has Tiffany Keith [phonetic] there, et cetera, from CPS who was the initial  
10 case worker.

11 MR. SPEED: Also, in front of Judge Teuton and Deputy  
12 District Attorney Abigail Frierson [phonetic].

13 THE COURT: Okay. So, It's 11:30. We'll come back at 1:00.

14 MS. DIGIACOMO: I'm not sure we're going to have enough  
15 time, Your Honor. By the time I get back to my office, we get it running,  
16 we go through the transcript -- and I would also ask --

17 THE COURT: Do we have all, I don't even remember, the  
18 whole afternoon today?

19 MS. DIGIACOMO: We do, Your Honor. And we --

20 THE COURT: Something else?

21 MS. DIGIACOMO: We have the video testimony at 3:30.

22 THE COURT: The video testimony?

23 MS. DIGIACOMO: Dr. Cetl in --

24 THE COURT: It's all news to me. Nobody told me that.

25 MS. DIGIACOMO: -- Texas. Oh, I'm sorry. We've been

1 working with your staff to do it.

2 THE COURT: At 1:30?

3 MS. DIGIACOMO: That's fine. I just would ask if they intend  
4 to use anything else that he said that he did receive pursuant to the  
5 subpoena, because it doesn't sound like the State has that either.  
6 Because if they do intend to use that, I would ask for copies of that.

7 THE COURT: I'm a little concerned. This was done by a  
8 court order. Why isn't it noticed to both parties? You're saying it was  
9 done by court order, correct?

10 MR. SPEED: It was. The Court saw the order. And when  
11 we're --

12 THE COURT: It wasn't me, I don't think. Although --

13 MR. SPEED: It was not. And we were clearly told by the  
14 records office, I'm not sure what they're official title is, that we had to  
15 obtain a court order from the judge that presided over the hearing in  
16 family court and we did that. Now, it seems like the State was told the  
17 same thing, but in Ms. DiGiacomo's own words, they weren't as lucky.

18 THE COURT: I'm not very big on ex parte court orders under  
19 any circumstance and that's a matter because it's ex parte. But --

20 MR. SPEED: But these aren't ex parte.

21 THE COURT: 1:30. All right, we're done.

22 MS. DIGIACOMO: But, just for the record.

23 MR. SPEED: Thank you, Judge.

24 THE COURT: Go ahead.

25 MS. DIGIACOMO: It is ex parte, the motion that they did that

1 he showed you.

2 MR. SPEED: To obtain records that are in the State's  
3 possession all ready.

4 MS. DIGIACOMO: Excuse me. How --

5 THE COURT: All right. Counsel, I know -- I've already said  
6 my decision. I don't think that's in the State's -- this is a criminal case  
7 and that goes way beyond the State's normal purview, if you will, of  
8 obtaining, for instance, police records. This is way past that. All right,  
9 1:30. Tell them Steve.

10 THE MARSHAL: Yes, Judge.

11 [Recess taken from 11:38 a.m. to 2:07 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: Anything outside the presence?

14 MS. DIGIACOMO: Your Honor, okay, we -- quickly, there was  
15 11 WAV files on the disc that we eventually got from the Defense. I do  
16 have conversations with the transcript. When we went through just  
17 quickly -- Court's indulgence while I find it -- there is substantial errors in  
18 -- I don't know if you can see all my writing. There's substantial errors  
19 and typos throughout this transcript that they had done of the video, so  
20 with that, we did get a chance to review it.

21 So we're fine moving forward, but just with regard to her  
22 testimony, pages 29, 31, 30, 32, to 33, as you can see from my notes,  
23 there's a lot of typos, a lot of, I guess -- it was just not translated or  
24 transcribed properly. So thank you for the opportunity and we're ready  
25 to proceed now.

1 THE COURT: Defense? You ready to go?

2 MR. SPEED: Tegan, you ready?

3 MS. MACHNICH: Yes. Thank you, Your Honor. Is there  
4 anything you need from us with regard to argument or just ready to  
5 proceed?

6 THE COURT: As far as what?

7 MS. MACHNICH: Nothing. That's why I just wanted to make  
8 sure.

9 THE COURT: They seem -- they haven't -- other than the -- if  
10 you will, authenticity of the transcript, it should be done just like here,  
11 even though the JAVS recording in family court, assuming this was in  
12 family court is the transcript, having it -- well, that's probably not the  
13 right word -- is the official record. Having it transcribed by just anybody,  
14 in my mind, it's -- I know we have to -- it has to be Judy, or this approved  
15 system, otherwise, it's, you know -- anybody -- sometimes they ask for a  
16 disc and we explain to them, that's not an official transcript, but having  
17 said that, let's go.

18 MS. DIGIACOMO: And just for the record, too, if they try -- if  
19 Ms. Machnich tries to get in, you know, like she's been doing reading,  
20 and I disagree and am going to object to if she's reading something  
21 that's different than on a video.

22 MS. SUDANO: And just for the record, as well, Your Honor,  
23 we will be seeking to admit portions of the actual JAVS video.

24 MS. DIGIACOMO: That is correct.

25 MS. MACHNICH: And Your Honor, we obviously have all of



1 our standing objections that we can deal with alter once they make their  
2 proffers.

3 THE COURT: All right. Let's go. Steve, bring them in.

4 THE MARSHAL: Yes, Judge.

5 THE COURT: Thank you. Yeah, you need to give us a copy  
6 of the transcript so we can make it a Court's exhibit.

7 MR. SPEED: Does the Court still have one? I'm not sure.

8 THE COURT: I don't have anything unless -- oh. If you gave  
9 it to the Court Clerk --

10 MS. DIGIACOMO: You had like three more in your box that  
11 was clipped in a binder.

12 MR. SPEED: Right. I remember I approached Your Honor  
13 with one and then Ms. DiGiacomo did also.

14 MS. DIGIACOMO: But we got them --

15 THE MARSHAL: Please rise for the jury.

16 [Jury in at 2:11 p.m.]

17 [Inside the presence of the jury]

18 THE COURT: Please be seated. Good afternoon, ladies and  
19 gentlemen.

20 JURORS: Good afternoon.

21 THE COURT: So hopefully I said -- I think I recall saying,  
22 we're going to start at 8:30. Bring in the witness.

23 [Pause]

24 THE COURT: You can be seated, ma'am. Just, Ms. Moran,  
25 remember you're still under oath.

1 THE WITNESS: Okay.

2 THE COURT: Defense?

3 MS. MACHNICH: Thank you, Your Honor.

4 CROSS-EXAMINATION CONTINUED

5 BY MS. MACHNICH:

6 Q Okay. All right. Meily, turning your attention back to your  
7 testimony at a family court hearing on February 21st, 2017. Okay?

8 A Okay.

9 Q All right. In reference to the -- what you've said is the August  
10 2015 touching incident; do you know which I'm referring to?

11 A No.

12 Q The touching you've said previously in your testimony before  
13 this court under your clothes after he checked your scars?

14 A Yes.

15 Q That incident. Okay.

16 A Okay.

17 Q And you previously testified before this court that the  
18 touching was beneath your clothes, correct?

19 MS. DIGIACOMO: And for the record, she's asking the  
20 interpreter for clarification.

21 MS. MACHNICH: And Your Honor, if we can just take a  
22 pause from that.

23 BY MS. MACHNICH:

24 Q Meily, you have a woman sitting next to you, correct?

25 A Yes.

1 Q And she is an interpreter that's been provided by the Court?

2 A Yes.

3 Q And she's there to help you if you don't understand any of  
4 the words that one of the attorneys is asking you in English, correct?

5 A Okay.

6 Q Is that correct?

7 A Yes.

8 Q Sorry. So for the jury's information, the woman sitting  
9 behind you is a fair and neutral party who has been provided by the  
10 Court to assist you?

11 A Okay.

12 Q Yes?

13 A Yes.

14 Q Okay, fantastic. All right. Please, go ahead.

15 A Yes.

16 Q Okay, but previously, at the family court hearing, when  
17 speaking about that incident, you said that the touching was above your  
18 clothes, correct?

19 A I said under the clothes. Not above.

20 Q I understand that that is your testimony here today, ma'am.  
21 Do you recall saying that it was above your clothes during the family  
22 court hearing?

23 A I don't recall that.

24 Q Okay. So you recall testifying in front of the family court on  
25 February 21st, 2017?

1 A Yes.

2 Q You were under oath?

3 A Yes.

4 Q There was a judge present, but not this judge?

5 A Yes.

6 Q There were lawyers present, but not these lawyers?

7 A Yes.

8 Q And you were asked the following question and gave the  
9 following answer pertaining to that August 2015 incident:

10 "Q Where were your clothes when this was happening?

11 "A Oh, it was like above my clothes.

12 Correct?

13 A I think so.

14 Q Thank you. And further --

15 MS. MACHNICH: Court's brief indulgence. Forty-three,  
16 counsel.

17 MS. DIGIACOMO: I'm sorry?

18 MS. MACHNICH: Page 43.

19 MS. DIGIACOMO: Thank you.

20 BY MS. MACHNICH:

21 Q Further, you were then asked by counsel the following and  
22 gave the following answering:

23 "Q And he took off your clothes?

24 "A No, it was above my clothes.

25 Also pertaining to this incident, correct?

1           A     Can you give me a second?

2           Q     Yes.

3           MS. MACHNICH: Madam Interpreter, was there an answer

4 or --

5           THE INTERPRETER: She has not answered yet.

6           MS. MACHNICH: Okay, just making sure.

7           THE WITNESS: Can you repeat that again, please?

8           MS. MACHNICH: Sure.

9 BY MS. MACHNICH:

10          Q     Sure. Additionally, during that same family court hearing we  
11 just referenced, referencing the same incident, you were asked again:

12          "Q    And he took off your clothes?

13          "A    No, it was above my clothes.

14          A     I think so.

15          Q     What?

16          A     I think so.

17          Q     Okay, thank you. All right. Now, let's direct your attention to  
18 an exam that you had. Now, eventually, you were asked to participate in  
19 a sexual assault exam, correct?

20          A     I don't remember that.

21          Q     At some point, you were asked to let a doctor exam your  
22 private area, your vagina?

23          A     At the children facility?

24          Q     At some point associated with this case, did a doctor exam  
25 your private area, your vaginal area?

1 A I don't remember.

2 Q Okay. Fair enough. Let's discuss this. You've used the term  
3 relations or sexual relations during your testimony and in your  
4 statements, correct?

5 A Yes.

6 Q Okay. And you would agree that's a pretty grown up word,  
7 not really a teenage word?

8 A Yes.

9 Q Okay. In January 2016, you started health class in school,  
10 correct?

11 A Yes.

12 Q All right. And that is where you learned about having  
13 relations?

14 A Yes.

15 Q All right. Your health teacher taught you about that?

16 A Yes.

17 Q Now, let's speak about the job situation in the home. It was  
18 pretty common in your family for the kids to have jobs?

19 A No.

20 Q It was not? Your brother, Jose, worked, correct?

21 A Yes.

22 Q Okay. That he often went to work with Gustavo?

23 A Yes.

24 Q And this was as a labor, laying tile?

25 A Yes.

1 Q And he would assist Gustavo in that work?

2 A I believe so.

3 Q Okay. But you were not working at the time in June/July  
4 2016?

5 A Yes.

6 Q That's correct?

7 A Yes, that's correct.

8 Q You were off of school for the summer?

9 A Yes.

10 Q Okay. And it was your opinion that if you had to work, you  
11 wanted to work with your mom at your uncle's restaurant?

12 A Yes.

13 Q But you couldn't work there until you were 15?

14 A Sixteen; yes.

15 Q Oh, 16. Okay. And until you turned, I guess, 15 or 16, now  
16 that you've said, you didn't think you should have to work anywhere  
17 else, right?

18 A Yes.

19 Q And some of the disappointment Gustavo displayed towards  
20 you was because you weren't working?

21 A Yes.

22 Q All right. In fact, on July 11th, 2016, your argument with  
23 Gustavo was about the fact that he didn't want you anymore in the  
24 house because you didn't work?

25 A Yes.

1 Q Thank you. And turning your attention just briefly back to  
2 school, the school year, the 2015/2016 school year, you had a classmate  
3 in English class who told you her stepdad tried to abuse her?

4 A Yes.

5 Q And you learned, after she made her claims, she never had to  
6 live with her stepdad again?

7 A Yes.

8 Q All right. And it's fair to say you do not want to live with  
9 Gustavo anymore?

10 A Correct.

11 Q Okay.

12 MS. MACHNICH: Court's brief indulgence. Thank you, Meily.  
13 I appreciate your time. Thank you, Your Honor.

14 THE COURT: Redirect?

15 MS. DIGIACOMO: Thank you.

16 REDIRECT EXAMINATION

17 BY MS. DIGIACOMO:

18 Q All right. Meily, let me ask you, back in 2015 and 2016 when  
19 you were living with the Defendant, Gustavo, how many times did he  
20 touch you, physically touch you inappropriately?

21 A Can you repeat the dates?

22 Q Sure. From August of 2015 until you and your mom reported  
23 it to the police July of 2016?

24 A How many different incidents? How many different events  
25 was there where he physically touched you?



1           A     Three.

2           Q     Okay. Do you remember the exact order of how those  
3 occurred? Which came first, which came second, which came third, as  
4 you sit here today?

5           A     Yes.

6           Q     Okay. Which one came first?

7           A     The one in August 2015.

8           Q     All right. And that is when what occurred?

9           A     The one where he checked my scars, and everything  
10 happened.

11          Q     Okay, and he kept taking his hand further down?

12          A     Yes.

13          Q     Okay. Now, you testified, I believe it was yesterday, that  
14 when he took his hand down inside your pants, it was inside your pants,  
15 but on top of your underwear?

16          A     Yes.

17          Q     Okay. And then the second incident you remember, tell me  
18 about that.

19          A     That one was when he -- at the last mobile house on June.

20          Q     Okay. What happened?

21          A     That was when he kissed me.

22          Q     Okay. And then what's the third one you remember?

23          A     The one where it happened before calling the police. The  
24 one in June -- July 11th.

25          Q     And is that when he actually put something inside your

1 vagina?

2 A Yes.

3 Q Okay. Other than those three times we talked about, were  
4 there any other times that he ever physically touched you  
5 inappropriately?

6 A No.

7 Q Okay. We kind of talked -- well, we did talk yesterday,  
8 though, there were other incident that occurred where he would say  
9 things to you about what he wanted to do, but he didn't touch you; is  
10 that right?

11 A Yes.

12 Q Okay. And how many times did that happened where he  
13 would say what he wanted to do, but he did not touch you?

14 A Once in a while. I don't remember how many times.

15 Q Okay. You talked yesterday about one time that happened  
16 while you were in the car?

17 A Yes.

18 Q And you talked about one time, it happened when you were  
19 at an apartment?

20 A Yes.

21 Q And that's the apartment you lived in between the mobile  
22 homes?

23 A Yes.

24 Q Okay. But it happened more times than those two specific  
25 instances you remember?

1 A Yes.

2 Q When he would talk to you about what he wanted to do to  
3 you, did he always say the same thing?

4 A Sometimes, he would phrase it in other words.

5 Q Okay. So what was it that he told you he wanted to do?

6 A He wanted to be with me.

7 Q Okay. And what did you take "with you" to mean?

8 A The way he would say it, I would take it in a sexual way.

9 Q Okay. Did that happen -- when he told you he wanted to be  
10 with you or wanted to have relations, did that happen -- or excuse me --  
11 did he ever say that before you took your health class in eighth grade?

12 A No.

13 Q Okay. It was after?

14 A It was during.

15 Q During. While you were in it. So did you take health the first  
16 semester, or in the fall semester of eighth grade or in the spring?

17 A Spring. Yeah, spring.

18 Q Okay. So it was in the spring when he would start saying he  
19 wanted to do these things?

20 A Yes.

21 Q Okay. When he started to say that he wanted to have  
22 relations with you, do you remember, is that when you told your brother,  
23 Jose?

24 MS. MACHNICH: I'm going to say objection. Leading, at this  
25 point.

1 MS. DIGIACOMO: I'm asking her if she remembers if she  
2 told him before or after.

3 THE COURT: Overruled.

4 MS. DIGIACOMO: Thank you. Okay. Let me go back.  
5 BY MS. DIGIACOMO:

6 Q When he started saying to you that he wanted to have  
7 relations, but wasn't touching you, did you tell your brother, Jose, about  
8 what he was saying or doing before he started saying those things or  
9 after?

10 A After.

11 Q Okay. And why did you tell Jose after?

12 A Because I started to get scared.

13 Q Okay. When you told Jose, did you give him specifics about  
14 what had happened between you and Gustavo or did you -- or what did  
15 you tell him?

16 A I tell him -- tell him briefly, like some things that happened,  
17 not detailed.

18 Q Okay. Just tell us, what did you tell him? Like what did you  
19 convey to Jose?

20 A I told him that I didn't like to be with Gustavo anymore  
21 because he was doing certain things that I wasn't okay with doing, and  
22 he asked me what kind of things, and I told him sexually related things,  
23 and that's all.

24 Q Okay. What was Jose's reaction when you told him?

25 A He was taken a bit back, but he believed me.

1 Q Okay. Did Jose want you to tell your mom?  
2 A Yes.  
3 Q And what did you tell him?  
4 A Told him no.  
5 Q Did you tell him why you didn't want to tell your mom?  
6 A Yes.  
7 Q And what did you tell him?  
8 A I told him not to say anything to mom because I was afraid  
9 that Gustavo might make -- might hurt -- might hurt my family.  
10 Q Okay. Had Gustavo ever said he would hurt you or your  
11 family in any of these kind of sexually related incidents?  
12 A Yes.  
13 Q When was the first time he said something?  
14 A When we moved to the house, in the car. The one in the car.  
15 The incident in the car.  
16 Q Oh. So when your littlest brother, Gustavo, was born?  
17 A Yes.  
18 Q And what did he say?  
19 A He said that if I didn't have any sexual intercourse with him,  
20 he was going to take my little brothers away and he was going to kill my  
21 mom and my brother.  
22 Q Did he say what he would do to you?  
23 A No.  
24 Q Okay. How did that make you feel when you heard that  
25 statement?

1 A It made me feel mad and responsible.

2 Q Responsible how?

3 A Because their lives depended on me.

4 Q Depended on you how?

5 A On doing what he wanted me to do.

6 Q Okay. Did it also depend on not telling your mom?

7 A Yes.

8 Q Did he ever tell you specifically not to tell your mom or

9 anybody else?

10 A Yes.

11 Q And when was that?

12 A When we were having -- when -- the day he kissed me. No,

13 when -- the incident where we were in the living room, when we were

14 living in the mobile home.

15 Q Okay. Is that the very first incident or is that the one where

16 he kissed you?

17 A The very first incident.

18 Q And what did he tell you?

19 A He told me not to tell my mom or else he was going to be in

20 trouble.

21 Q Okay. And you said you felt responsible. Did you feel

22 responsible to not upset the family dynamics?

23 A I felt responsible for protecting my family.

24 Q Okay. So you thought if you did what Gustavo wanted, then

25 you would be protecting your family?

1 A Yes.

2 Q But then that day in July happened and you weren't thinking  
3 about protecting your family when you called your mom, were you?

4 MS. MACHNICH: Objection. She's been leading, again.

5 MS. DIGIACOMO: Okay. I'll rephrase.

6 THE COURT: Sustain.

7 MS. DIGIACOMO: Thank you.

8 BY MS. DIGIACOMO:

9 Q That day, July 11th of 2016 when you called your mom at  
10 work, what were you thinking when you called her?

11 A I wanted all of that to end.

12 Q And when you say, "all of that", what do you mean by that?  
13 What's that?

14 A I wanted to -- I wanted to stop living with Gustavo. I didn't  
15 want to see him anymore.

16 Q And why?

17 A Because I was tired of everything. I couldn't take it anymore.

18 Q Okay. And when you say everything, is that because of the  
19 things he was saying to you sexually?

20 A Yes, and the mistreats, and other things.

21 Q Okay. So the reason why you told your mom was because of  
22 the things Gustavo was doing and saying?

23 A Yes.

24 Q Okay. Did you make up everything you've talked about here  
25 today just to break up your mom and Gustavo?

1 A No.

2 Q When this happened and the police were called, I think  
3 yesterday, you said you were scared when the police were there --

4 A Yes.

5 Q -- about Gustavo coming home?

6 A Yes.

7 Q When you had told your mom and called the police, what did  
8 you imagine was going to happen?

9 A I thought he was going to get away.

10 Q You thought Gustavo was going to get away?

11 A Yes.

12 Q You mean like the police wouldn't get him?

13 A Yes.

14 Q And did you think that you were going to have to testify so  
15 many times and talk about this with so many people?

16 A No.

17 Q Okay. It's been almost three years since you told the police  
18 about what happened, okay? Remember that?

19 A Yes.

20 Q And would you say that your memory is better back then as  
21 to specific details or now as you sit here?

22 A I feel it will be better back then because that's -- it was an  
23 early stage.

24 Q Okay. It was right after it happened, closer in time?

25 A Yes.



1 Q And you remembered more?

2 A Yes.

3 MS. MACHNICH: Objection. She's leading, again.

4 THE COURT: Sustained.

5 MS. DIGIACOMO: Okay.

6 BY MS. DIGIACOMO:

7 Q So do you -- I guess to rephrase, do you think you remember  
8 more specific details now or back then when you first told the police?

9 A I think I do remember more things.

10 Q Back then or now?

11 A Back then.

12 Q Okay. As the time has gone on, have you tried to remember  
13 all the details?

14 A Yes.

15 Q Okay. Do you feel like there are some things you don't want  
16 to remember, though?

17 A Yes.

18 Q How did you feel having to come in here yesterday and  
19 testify?

20 A Helpless.

21 Q Did you want to be here yesterday or today?

22 A No.

23 Q Okay. And let's go back to 2016. When you spoke to the  
24 police, did you speak to them initially in English or Spanish?

25 A English.

1 Q Okay. Later that day when you went and did the interview  
2 with Ms. Espinoza, did you do that in English or Spanish?  
3 A I used both languages.  
4 Q Okay. So did you start in one and end in another?  
5 A Yes.  
6 Q Which language did you start in?  
7 A With English.  
8 Q And then you switched to Spanish?  
9 A Yes.  
10 Q And why did you switch to Spanish?  
11 A Because there was some things that I couldn't say in English.  
12 Q Okay. Now almost three years later, do you think your  
13 English is better than it was back then?  
14 A Yes.  
15 Q Okay. Even now, when you are at home, what is the primary  
16 language that you and your family speak?  
17 A Spanish.  
18 Q Okay. So when is it that you normally use English?  
19 A When I'm outside, like in school.  
20 Q Or here?  
21 A Or here.  
22 Q Okay. When you testified and what counsel refers to as a  
23 family court hearing in February of 2017, do you remember, did you do  
24 that in English or Spanish?  
25 A English.

1 Q When you had talked to Jose and told him what was going  
2 on, I think you said that you said you were scared to be alone with  
3 Gustavo --

4 A Yes.

5 Q -- the Defendant?

6 A Yes.

7 Q Did you ask Jose to do anything?

8 A I asked him to keep quiet.

9 Q Okay. Did you ever ask him to be around?

10 A Yes.

11 Q Okay. What did you ask him?

12 A I told him, if he could watch my back.

13 Q And what did Jose say?

14 MS. MACHNICH: Objection.

15 MS. DIGIACOMO: Oh.

16 MS. MACHNICH: Hearsay.

17 MS. DIGIACOMO: You're right.

18 THE COURT: Sustained.

19 MS. DIGIACOMO: Thank you.

20 BY MS. DIGIACOMO:

21 Q After you told Jose, did he have your back?

22 A Yes.

23 Q Okay. And I think yesterday, you talked about that there was  
24 a time that Jose called and told you that Gustavo was coming home, so  
25 you were warned?

1 A Yes.

2 Q Is that one of the things that you consider him having your  
3 back?

4 A Yes.

5 Q Your family, your brothers, specifically, all three of them, do  
6 they mean a lot to you?

7 A Yes.

8 Q Okay. When you were -- in the summer of 2016 before  
9 calling the police, did you have to stay home and watch your two  
10 younger brothers every day?

11 A Yes.

12 Q Okay. Now, tell me about the conversation or conversations  
13 you would have with Gustavo, the Defendant, about you not working.

14 A He would always call me out for that. He would tell me that I  
15 was a useless person because I didn't work, because I didn't do anything.  
16 He would always compare me with his family in Honduras, telling me  
17 that they were better than me, that I was a dumb girl.

18 Q When did he start talking to you like that?

19 A When we moved to the mobile home.

20 Q Okay. Which mobile home?

21 A 2016.

22 Q In 2016. So when you -- so after or towards the end, or after  
23 your eighth grade graduation?

24 A After the eighth grade graduation.

25 Q Okay. And it was after then he had told you he wanted to

1 have sexual relations?

2 A Yes.

3 Q Did he talk like that to Jose?

4 A No.

5 Q When Gustavo, the Defendant, was living with you, did he

6 always work?

7 A No.

8 Q How often did he work?

9 A Two months. It depended if he had work.

10 Q All right. What about your mom?

11 A My mom --

12 Q Did she always work?

13 A Yes.

14 Q And how many days a week would she work?

15 A All seven of them.

16 Q Almost every week or every week?

17 A Every single week.

18 Q All right. And in 2015 and 2016, did she always work in the

19 same place?

20 A She worked sometimes in Roberto's.

21 Q Is that a taco shop?

22 A Yes.

23 Q And then where else would she work?

24 A And she would work with my uncle.

25 Q And where did your uncle work?

1 A Santa Rosa Taco Shop.

2 Q Okay. So your mom always worked?

3 A Yes.

4 Q Was she the main breadwinner for the family?

5 A Yes.

6 Q And if Jose, he was working, did he get a paycheck?

7 A No.

8 Q Did he get paid money?

9 A No.

10 Q But he would -- did he work a job not going with Gustavo to

11 one of his jobs?

12 A No.

13 Q Did you get paid for having to babysit your two younger

14 brothers every day?

15 A No.

16 Q Did you mind having to babysit your two younger brothers?

17 A No.

18 Q All right. Now you were asked some questions about the

19 interview that you gave with Ms. Espinoza. Do you remember that?

20 A Yes.

21 Q Okay. When you had that conversation with her, did she just

22 ask you to tell her what you wanted to tell her, or was she asking you

23 very specific questions, or did she just say, tell me what happened?

24 A She asked me very specific questions.

25 Q Okay. When counsel was asking you about how often it

1 would happen, when you were talking to Ms. Espinoza -- well, let me go  
2 back. The question that was posed to you was --

3 MS. DIGIACOMO: And this is page five, counsel.

4 BY MS. DIGIACOMO:

5 Q -- was tell me everything about the abuse, and you started to  
6 tell her about things. When she said "abuse", did it mean one thing to  
7 you or did it mean lots of things to you? When you heard the word  
8 "abuse", what did you think she was talking about?

9 A I thought different things.

10 Q Okay. Like what kind of things did you consider abuse to talk  
11 to her about?

12 A Verbal abuse, sexual abuse. Anything violent. Anything  
13 that's wrong.

14 Q Okay. And so when you said that these things kept  
15 happening like every single week or month, were you talking just about  
16 when he would touch you or were you talking about everything?

17 A Everything.

18 Q Okay.

19 MS. DIGIACOMO: Moving on to page 11, counsel.

20 BY MS. DIGIACOMO:

21 Q When you talked to Ms. Espinoza about the incident when he  
22 actually inserted his finger or his tongue inside your vagina, that  
23 incident, and you were asked -- I believe the question is, and when he  
24 inserted his finger, where did he insert his finger. Did you understand  
25 what she was asking?

1           A     No.

2           Q     Okay. And so when you told her that he just put his finger  
3 inside, what did you mean by that? Inside where?

4           A     Inside where -- I'm confused.

5           Q     Okay. She asked you where he put his finger, and you said  
6 he put his finger inside, and then the baby cried and that's what stopped  
7 it. Do you remember that?

8           A     Yes.

9           Q     Okay. So what I'm asking you is when you said "inside",  
10 what body part were you talking about?

11          A     Inside of my vagina.

12          Q     Now, back when you talked to Ms. Espinoza, if you said that  
13 the incident where he inserted his finger and tongue inside your vagina  
14 happened before the kiss, is that possible that that's the way it  
15 happened? I'm talking about two different days when I say before.

16          A     Can you repeat that again, please?

17          Q     Okay.

18                MS. DIGIACOMO: You know what? Actually, can I approach,  
19 Your Honor?

20                THE COURT: Yes.

21                MS. DIGIACOMO: I'm going to show you page 11 and 12,  
22 okay? So if you can read this to yourself. This page --

23                THE WITNESS: Uh-huh.

24                MS. DIGIACOMO: -- and then this page, okay?

25                THE WITNESS: Uh-huh.



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GUSTAVO GUNERA-PASTRANA,           )         No. 79861  
  )  
Appellant,                                )  
  )  
v.    )  
  )  
THE STATE OF NEVADA,                )  
  )  
Respondent.                              )  
  )

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

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