

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

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3 GUSTAVO GUNERA-PASTRANA,) No. 79861

4 Appellant,)

5 v.)

6 THE STATE OF NEVADA,)

7 Respondent.)

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9 **APPELLANT'S APPENDIX VOLUME VIII PAGES 1705-1954**

10

11 DARIN IMLAY

12 Clark County Public Defender

13 309 South Third Street

14 Las Vegas, Nevada 89155-2610

15 Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

AARON FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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1 MS. DIGIACOMO: And then let me know when you -- you
2 can read it in English or Spanish. Whichever is better.

3 [Pause]

4 MS. DIGIACOMO: Okay. And I'm going to have you read,
5 also -- Court's indulgence.

6 BY MS. DIGIACOMO:

7 Q Okay. I'm going to show you also pages 27 through 29,
8 okay? Page 28. All right. If you can read page 28 and 29, which is
9 talking about the incident with the kiss, okay?

10 THE WITNESS: Uh-huh.

11 [Pause]

12 THE WITNESS: Uh-huh.

13 MS. DIGIACOMO: Okay.

14 BY MS. DIGIACOMO:

15 Q Does it kind of refresh your recollection?

16 A Uh-huh.

17 Q Is that a yes for the record?

18 A Yes.

19 Q So what I last showed you on 28 and 29, when you were
20 talking about the incident where the Defendant kissed you with his
21 tongue and mouth on your mouth, you told Ms. Espinoza that it
22 happened yesterday before you called your mom; is that correct?

23 A Yes.

24 Q Okay. And then when I showed you pages -- I think it was 11
25 and 12 -- that was talking about when he inserted his finger and his

1 tongue into your vagina, and it was referenced that that had happened in
2 June?

3 MS. MACHNICH: Your Honor, again, she's leading.
4 Objection.

5 MS. DIGIACOMO: I'm just trying to lay --

6 THE COURT: I'm going to overrule it. I don't think she was
7 finished with the question.

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q So as you sit here today, do you remember which incident,
11 one where he inserted something inside you, or the incident when he
12 kissed you, was the one that happened right before you called your
13 mom?

14 A It was the one where he inserted something --

15 Q Okay.

16 A -- inside.

17 Q Let me see. And then let me ask you this, Meily. In the
18 grand scheme, you remember these three incidents, right?

19 A Yes.

20 Q Does it matter to you which order they came in?

21 A Right now?

22 Q Yeah. Yes.

23 A Yes.

24 Q It does matter to you which order they happened in or does it
25 just matter that it happened?

1 MS. MACHNICH: Leading. Your Honor, objection.

2 THE COURT: Sustained.

3 MS. DIGIACOMO: Okay.

4 MS. MACHNICH: And I'd ask to strike at this point because
5 she's already suggested the answer.

6 MS. DIGIACOMO: She didn't answer, though. There's
7 nothing to strike.

8 THE COURT: She hasn't answered.

9 MS. DIGIACOMO: Okay, so let me rephrase.

10 BY MS. DIGIACOMO:

11 Q These things that he did to you, Gustavo, when he touched
12 you, are the dates of when those happened important to you?

13 A No.

14 MS. MACHNICH: And Your Honor, I'm going to move to
15 strike that. She just suggested the answer in the prior question and then
16 asked the question a different way to get the answer she just said.

17 MS. DIGIACOMO: And Your Honor, she objected to the form
18 of my question and I rephrased.

19 THE COURT: Yes.

20 MS. MACHNICH: But she had already suggested the answer
21 twice.

22 THE COURT: Overruled.

23 BY MS. DIGIACOMO:

24 Q Now, when the incident happened, when he inserted
25 something into you, can you explain, again, how that happened? You

1 were in the bed -- master bedroom with --

2 MS. MACHNICH: Objection. Asked and answered many
3 times.

4 MS. DIGIACOMO: Your Honor, this is redirect and I'm
5 cleaning up what was done on cross.

6 THE COURT: Overruled.

7 MS. DIGIACOMO: Thank you.

8 THE COURT: Questions -- all right, overruled.

9 MS. DIGIACOMO: I'm sorry.

10 BY MS. DIGIACOMO:

11 Q Explain what happened when the incident occurred, where
12 he had put his finger and his tongue inside you.

13 A That day I was in the master bedroom putting the baby to
14 sleep, the youngest one. The other one was sleeping next to me. He
15 came in the room. I thought it was my brother, but it wasn't him. I
16 asked him, where is my brother. He didn't respond. He told me to stand
17 up and lift the baby down. I did. I put her next to the other one. I got u.
18 He told me, take down your pants, pull down your pants. I told him no.
19 He did it for me.

20 Q I'm sorry?

21 A He did it for me. He even told me to lay down. I did. And
22 that's when everything else happened.

23 Q All right. And so when you're laying on the bed, do you
24 remember -- you said you were wearing gym shorts?

25 A Yes.

1 Q Do you remember where your gym shorts were, and your
2 underwear were?

3 A Yes.

4 Q Where?

5 MS. DIGIACOMO: Okay. That was a really bad question. I
6 apologize.

7 BY MS. DIGIACOMO:

8 Q You're laying on the bed?

9 A Yes.

10 Q You said that he took down your shorts and your underwear?

11 A Yes.

12 Q Were they still on your legs or did they come all the way off
13 of your body?

14 MS. MACHNICH: Your Honor --

15 THE WITNESS: They were still --

16 MS. MACHNICH: -- I'm going to object as to asked and
17 answered from direct and not challenged, so beyond the scope of cross.

18 MS. DIGIACOMO: Actually, I'm trying to get to page 14.

19 THE COURT: Counsel, approach.

20 [Sidebar begins at 2:51 p.m.]

21 THE COURT: I get what you're saying, but I think my
22 recollection is you went over some of this stuff, which means it is
23 appropriate for redirect, but tell me if --

24 MS. MACHNICH: I didn't challenge --

25 MS. DIGIACOMO: You did.

1 MS. MACHNICH: -- where her --

2 MS. DIGIACOMO: Page 14.

3 MS. MACHNICH: -- where her pants were. I certainly
4 would've --

5 MR. SPEED: Well, she's not challenging what she's saying.

6 MS. MACHNICH: Yeah. The challenge was to --

7 THE COURT: You --

8 MS. MACHNICH: No, I'm going to see -- and let me look at
9 the actual --

10 THE COURT: I'll -- all right.

11 MS. MACHNICH: I mean, because --

12 THE COURT: To the best --

13 MS. MACHNICH: Because --

14 THE COURT: -- of my recollection is that that was at least
15 covered on your cross, and therefore, I'm going to allow it. If it wasn't
16 specific -- obviously I don't have a transcript, so I'm going to allow it.

17 MS. DIGIACOMO: Thank you.

18 [Sidebar ends at 2:52 p.m.]

19 BY MS. DIGIACOMO:

20 Q When he took down your underwear and your shorts, did
21 they stay on your body or did they come all the way off of your body?

22 A They stayed on my body.

23 Q And counsel had asked you about when you had, page 14,
24 when you had talked to Ms. Espinoza and you told her that he threw you
25 on the bed and pulled down your pants and shorts and underwear and

1 then began touching you.

2 Do you remember if you were -- if he threw you on the bed or
3 pushed you on the bed?

4 A No, I don't remember.

5 Q Okay. But you remember laying on the bed when he touched
6 you?

7 A Yes.

8 Q Okay. Now, counsel had asked you about, I guess it's a
9 phrase, using your period as an excuse.

10 A Yes.

11 Q Do you remember testifying to that at prelim?

12 A I think so.

13 MS. DIGIACOMO: Court's indulgence. Your Honor, may I
14 approach?

15 THE COURT: Yes.

16 MS. DIGIACOMO: Page 12, counsel. Court's indulgence. I
17 apologize. Oh, sorry. It's page 11 and 12. Okay.

18 BY MS. DIGIACOMO:

19 Q Meily, I'm going to show you -- let's start at 10 just to kind of
20 refresh your memory. Just read from here to here and then right there,
21 okay? So all the way from 10 to 12, please.

22 MS. DIGIACOMO: And for the record, this is her preliminary
23 hearing transcript.

24 [Witness reviews document]

25 BY MS. DIGIACOMO:

1 Q That refresh your memory?

2 A Yes.

3 Q Okay. So at the preliminary hearing, what did you say about
4 using your period?

5 A I used it as an excuse.

6 Q Okay. An excuse for what?

7 A To make him stop.

8 Q And which time was that? What was he doing?

9 A It was the time where he inserted something inside me.

10 Q Okay. Now, when counsel was questioning you about him
11 talking to you about if you want to have sexual relations with him and
12 you said it was in the car going to buy the baby seat?

13 A Yes.

14 Q And then you said there was another incident that happened
15 at the apartment?

16 A Yes.

17 Q Okay. Counsel had shown you pages 25 to 27 of your
18 interview. Do you remember that when she showed you these certain
19 pages?

20 A I don't --

21 MS. MACHNICH: Your Honor, that misstates what occurred.
22 I did not show her anything.

23 MS. DIGIACOMO: Oh, you're right.

24 BY MS. DIGIACOMO:

25 Q When she was telling you what was in pages 25 through 27.

1 MS. MACHNICH: And Your Honor, that also misstates. I was
2 impeaching her with her prior statements. Not telling her things.

3 THE COURT: That's correct.

4 MS. DIGIACOMO: Okay.

5 BY MS. DIGIACOMO:

6 Q So one of the times that he was asking you about having
7 sexual relations was at an apartment?

8 MS. MACHNICH: Objection, Your Honor. Leading.

9 THE COURT: Sustained.

10 MS. DIGIACOMO: Okay.

11 BY MS. DIGIACOMO:

12 Q So tell me, where were the times that you remember him
13 saying something to you about wanting to have sexual relations?

14 A I don't remember the times, but I remember the places.

15 Q Okay. What were the places?

16 A The apartment between the mobile homes and the mobile
17 home 2016. When we went to buy the car. And that's it.

18 Q Okay.

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

20 THE COURT: Yes.

21 BY MS. DIGIACOMO:

22 Q Okay. So now I'm going to show you pages -- start at the
23 bottom of 25 and read all the way through to page 27. Okay. Can you
24 read that for me?

25 A Uh-huh.

1 [Witness reviews document]

2 Q Okay. Did you go all the way to 27?

3 A Oh.

4 Q Sorry.

5 [Witness reviews document]

6 A Okay.

7 Q Okay. Now does that refresh your recollection as to what
8 you were talking to Ms. Espinoza about?

9 A Yes.

10 Q Okay. And you were talking to her about one of the times
11 that he had talked to you about having sexual relations?

12 A Yes.

13 Q And this time it was in the apartment where we lived before?

14 A Yes.

15 Q Okay. So that's just one of the times it happened?

16 MS. MACHNICH: Objection. Leading.

17 THE COURT: Sustained.

18 BY MS. DIGIACOMO:

19 Q Is that just the times or did you discuss every time with her?

20 A That was -- with who?

21 Q With Ms. Espinoza.

22 A Can you repeat the question again?

23 Q You talked to Ms. Espinoza about the time it happened in the
24 apartment.

25 MS. MACHNICH: Objection. Leading.

1 THE COURT: Sustained.

2 MS. DIGIACOMO: Okay.

3 BY MS. DIGIACOMO:

4 Q What you just read, what were you talking to Ms. Espinoza
5 about?

6 A Some of the times that he told me that I had to have sex with
7 him.

8 Q Okay. In this specific instance, where did that occur?

9 A In the apartment.

10 Q Now, Ms. Machnich asked you questions about whether or
11 not you had told, or you testified during the preliminary hearing about
12 seeing Gustavo or the Defendant's penis. Do you remember those
13 questions?

14 A Yes.

15 Q Do you remember if you did tell Ms. Espinoza about that
16 though?

17 A Yes.

18 Q Did you tell her about it?

19 A Yes.

20 Q In your interview?

21 A Yes.

22 Q And you described it for her as well?

23 A Yes.

24 Q Right now, you were asked about some things that you
25 testified to at the family -- what was called the family court hearing. Do

1 you remember those questions?

2 A Yes.

3 Q Did you testify to the same incidents that you testified in this
4 trial? Did you tell the family court the same things that you told us?

5 A No. They were different.

6 Q Okay. Well, did you talk about the three different times that
7 Gustavo touched you?

8 A They didn't ask me about that in there.

9 Q Okay. If I showed you a transcript, would that refresh your
10 recollection as to whether or not they asked you?

11 A Yes.

12 Q We're going to start with -- okay. So now I'm going to show
13 you just page 25, if you can read this to yourself and just let me know if
14 you did talk about the touching.

15 [Witness reviews document]

16 Q Did you get to read page 25?

17 A Yes.

18 MS. DIGIACOMO: Court's indulgence. Court's indulgence. I
19 apologize, but I'm missing a page in this transcript.

20 MS. MACHNICH: What page, counsel?

21 MS. DIGIACOMO: I stop at 16 and then start at 25. This is
22 what I'm missing. Do you have an extra copy, counsel?

23 MS. DIGIACOMO: We're going to check and make sure that
24 it has the pages that I think you forwarded it to me.

25 THE COURT: All right. We'll take a short recess. During this

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

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

9 [Jury out at 3:08 p.m.]

10 [Recess taken from 3:08 p.m. to 3:23 p.m.]

11 [Outside the presence of the jury]

12 THE COURT: We have a tech problem or what?

13 MS. DIGIACOMO: That's for the next witness.

14 THE COURT: Is it by video conference?

15 MS. DIGIACOMO: Yes.

16 THE COURT: Oh. I guess -- yeah. All right. So anything
17 outside the presence?

18 MS. DIGIACOMO: Not by the State.

19 THE COURT: Okay.

20 MR. SPEED: Your Honor, we did want to make a brief record
21 about something that we observed before we came in for this
22 afternoon's proceedings. We saw juror number -- I'm not sure which
23 one.

24 MS. MACHNICH: 1.

25 MS. DIGIACOMO: Juror Number 1, speaking with a disabled

1 gentleman who had been present for the majority of our proceedings I
2 know at least today. I'm not sure if he was here --

3 MS. MACHNICH: He was here earlier this morning.

4 MS. DIGIACOMO: Yes, he was.

5 MR. SPEED: Okay. I believe from his appearance that he is a
6 blind gentleman who is observing court and he was seen conversing
7 with Juror Number 1.

8 We just wanted to make the Court aware of that. And if Your
9 Honor believes that an additional admonishment is necessary in this
10 situation, then we would have no objection to it.

11 THE COURT: Told them now 20 times not to talk to anybody
12 about the case.

13 MR. SPEED: I know. And I do not hear the conversation. I
14 just saw that one of our jurors was conversing with a person who was
15 sitting as an observer of the court.

16 THE COURT: All right. I don't think we need or should
17 inquire of every or any -- a juror if he's whatever, just talking to
18 somebody, what were you talking about? I've admonished them ad
19 nauseum, so I don't know what else to do.

20 MR. SPEED: All right. We'll submit it, Your Honor. I'm just
21 making sure our record is clean.

22 THE COURT: I guess -- no, and I appreciate it. I wish they
23 listened to me. And a lot of times I can tell you we know they don't. All
24 right. So bring them back in.

25 THE MARSHAL: Please rise for the jury.

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[Jury in at 3:26 p.m.]

[Inside the presence of the jury]

THE COURT: Please be seated. Parties acknowledge the presence of the jury?

MS. DIGIACOMO: Yes, Your Honor.

MR. SPEED: Yes, Your Honor.

THE COURT: Thank you. You may proceed.

MS. DIGIACOMO: Thank you.

BY MS. DIGIACOMO:

Q All right, Meily. Do you remember Defense counsel asking questions about whether or not you testified at the preliminary hearing about Gustavo telling you to sit on his lap in the August 15th, 2015 incident?

A I don't remember.

Q You don't remember those questions?

A Excuse me?

Q Do you remember Defense counsel asking you questions about whether or not you testified at the preliminary hearing regarding you being told by the Defendant to sit on his lap?

A Yes.

Q Okay. And do you remember if you did testify to that at the preliminary hearing?

A I don't remember.

Q Do you remember if you testified to that at the family court hearing?

1 A Yes.

2 Q And did you at the family court hearing?

3 A Yes.

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

5 THE COURT: Yes.

6 BY MS. DIGIACOMO:

7 Q And showing you now that I do have the pages, showing you
8 the bottom of page 23 to the top of page 24. If you could just review that
9 and --

10 A You mean the [indiscernible]?

11 Q Yes.

12 [Witness reviews document]

13 A Okay.

14 Q All right. Does that refresh your recollection as to whether or
15 not you did sit, or excuse me, testify regarding him telling you to sit on
16 his lap and he started touching him you?

17 A Yes.

18 Q Okay. And you did say that at the family court hearing?

19 A Yes.

20 Q Now you talked about that you had used your period as an
21 excuse when he had used his finger and his tongue to insert it inside
22 your vagina?

23 A Yes.

24 Q Do you remember that?

25 A Yes.

1 Q Why did you use your period as an excuse?

2 A Because I wanted him to stop.

3 Q Okay, where does your period come out of your body?

4 A My vagina.

5 Q Okay. Does it come out of the same place where he was
6 inserting his finger or his tongue?

7 A Yes.

8 Q Now, Defense counsel asked you about on July 11th, 2016,
9 when you called and told your mom that prior to that you had had, as
10 she called it, an argument with Gustavo, the Defendant. Do you
11 remember those questions?

12 A Yes.

13 Q Okay. The argument that you had with him that day, what
14 was it about?

15 A The July 11th?

16 Q Yes.

17 A It was about whether I wanted to have sex with him or not.
18 And if -- because it didn't work.

19 Q Okay. So what specifically did he tell you about not working?

20 A Like I said before, that I was a worthless person, useless
21 because I didn't have a job while everyone else in my family like my
22 brother and my mom did.

23 Q So the job that Jose had, was it always to go to work with
24 Gustavo?

25 A Yes.

1 Q Did --

2 MS. MACHNICH: Objection, Your Honor. At this point, she's
3 already asked this question during redirect. This line of questioning,
4 she's already covered it.

5 MS. DIGIACOMO: Actually, my next question I have not
6 asked.

7 MS. MACHNICH: Okay.

8 THE COURT: Go ahead.

9 BY MS. DIGIACOMO:

10 Q Did Gustavo or the Defendant ever tell you or ask you to go
11 to his job with him?

12 A No.

13 Q Did he ever try and get you a job?

14 A No.

15 Q And then did he ever tell you he was going to kick you out of
16 the house?

17 A Yes.

18 Q And when was that?

19 A When he kissed me.

20 Q So that same day he kissed you? And why did he tell you he
21 was going to kick you out of the house?

22 A Because we had the argument -- we had another argument
23 regarding whether I worked or not.

24 Q Okay. So he said, if you don't work, I'm going to kick you
25 out?

1 A Yes.

2 Q Did he ever threaten to kick you out for any other reason?

3 A Yes.

4 Q And what was that?

5 A Because I didn't want to have sex with him.

6 Q Defense counsel asked you about, you said that you had

7 another friend whose stepdad had sexually abused her?

8 A Yes.

9 Q What grade was that in in?

10 A 8th grade.

11 Q And when did you learn about that in the 8th grade, when in

12 the school year?

13 A It was almost going to be graduation.

14 Q Okay. Right before graduation?

15 A Yes.

16 Q And what did you learn from your friend?

17 A She just told me that she hated boys. I asked her why, and

18 she told me that it was because her stepdad abused her.

19 Q And did she tell you what happened with her situation?

20 A She told me that her biological mom did everything to help

21 her stepdad.

22 Q And where did she end up living?

23 A With her real dad.

24 Q Okay. So she moved out of the situation?

25 A Yes.

1 Q Okay. Did you make up everything that you've told us about
2 Gustavo touching you?

3 A No.

4 Q Or saying those things?

5 A No.

6 Q You didn't do it to try and get him out of the house?

7 A No.

8 Q And why did you tell -- finally tell your mom about the things
9 Gustavo had done to you?

10 A Because I was tired, like I said before, of living with him,
11 having to deal with him saying those things to me and doing those
12 things to me. I was tired of living in fear.

13 MS. DIGIACOMO: Nothing further.

14 THE COURT: Recross?

15 MS. MACHNICH: Very briefly, Your Honor.

16 RECROSS-EXAMINATION

17 BY MS. MACHNICH:

18 Q Meily, is it fair to say that you've understood everything MS.
19 DIGIACOMO asked you?

20 A Yes.

21 Q In fact, during your redirect, you didn't require the use of the
22 interpreter at all?

23 A Yes.

24 Q And fair to say, during your direct examination, you didn't
25 require the use of the interpreter at all?

1 A Yes.

2 Q Yes?

3 A Yes.

4 Q So that's correct, yes?

5 A Yes.

6 Q Okay. Thank you.

7 THE COURT: Questions from the jury? Write it down, put
8 your seat number. Just raise your hand if you're still writing and we'll --
9 okay. We will get to you. Counsel approach.

10 [Sidebar begins at 3:34 p.m.]

11 THE COURT: How long is the -- it's not a videotape, how
12 long do you expect this to take?

13 MS. DIGIACOMO: Not long. Yeah, it shouldn't be.

14 THE COURT: Who --

15 MS. DIGIACOMO: It's the doctor who performed the SANE
16 exam.

17 THE COURT: Uh-huh.

18 MS. MACHNICH: And Your Honor --

19 THE COURT: You guys start. I'll give you -- there's more. I'll
20 guess we'll start with that. All right. That's the easiest one I think. What
21 the hell is the relevance of that?

22 MS. DIGIACOMO: It's not.

23 MS. MACHNICH: There's not.

24 THE COURT: All right. Do you want it read?

25 MS. DIGIACOMO: This one, we have no objection.

1 THE COURT: All right. Let's start off with the one --
2 MR. SPEED: Okay.
3 THE COURT: -- easiest one.
4 MS. MACHNICH: Okay. Court Exhibit Number 10, we would
5 object. That's not relevant.
6 THE COURT: Okay. It's not going to be given. We're not
7 giving this one. Okay. Where's the short one? Well, this is --
8 MS. MACHNICH: And that's number 10? Or 8, sorry.
9 THE COURT: This is 8. 8. This one it's sort of three
10 paragraphs, but --
11 MS. DIGIACOMO: State doesn't have an objection.
12 THE COURT: -- the bottom is the question.
13 MS. MACHNICH: No objection.
14 THE COURT: Is that the exact phrase. Any objection?
15 MR. SPEED: No.
16 MS. MACHNICH: No objection.
17 THE COURT: From the Defense? State?
18 MS. DIGIACOMO: No.
19 THE COURT: No objections, so I'll read 8.
20 MS. MACHNICH: I'm fine with 9.
21 MS. DIGIACOMO: Yeah.
22 MS. MACHNICH: 9 we have no --
23 MR. SPEED: Is there something on the back or no? Okay.
24 THE COURT: All right. So 9, any objection?
25 MR. SPEED: No.

1 THE COURT: State, no objection, right?

2 MS. DIGIACOMO: No objection to any of the three
3 questions. Just while we're up here, we will have to break just to make
4 sure she's --

5 THE COURT: We will have to what?

6 MS. DIGIACOMO: Break, to make sure she's connected.

7 MS. MACHNICH: The next witness.

8 THE COURT: Oh. Okay.

9 MS. DIGIACOMO: Because your JAVS guy was here.

10 THE COURT: All right. And in case I have, and I apologize, I
11 had garlic at lunch.

12 MR. SPEED: Oh my God, Your Honor.

13 THE COURT: It's killing me. It's killing me.

14 MS. DIGIACOMO: I was wondering what that was.

15 THE COURT: Well, I didn't -- I forgot. Okay. All right. We
16 will do that.

17 MR. SPEED: Thank you.

18 [Sidebar ends at 3:38 p.m.]

19 THE COURT: Ms. Moran, I'm going to read the questions
20 just as they are.

21 Did Gustavo have blood on his mouth when the sexual act
22 was over? Oh, mouth and fingers when the sexual act was over on July
23 11th? And then -- I'll read the whole thing. Was she on her period the
24 day Gustavo performed oral sex on her?

25 Did the Plaintiff use her period as a lie to deter the Defendant

1 from having oral sex with her or not to have sex with her the day
2 Gustavo was arrested.

3 So let me go back now, we'll do it one at a time. I think those
4 are three separate questions. Did Gustavo have blood on his mouth or
5 fingers when the sexual act was over on July 11th?

6 THE WITNESS: No.

7 THE COURT: And again, I'm reading it as written. Was she
8 on her period the day Gustavo performed oral sex on her?

9 THE WITNESS: No.

10 THE COURT: Did the Plaintiff use her -- it's not Plaintiff, but
11 all right. I'm reading it again. Did the Plaintiff use her period as a lie to
12 deter the Defendant from having oral sex with her or not to have sex
13 with her the day Gustavo was arrested?

14 THE WITNESS: Yes.

15 THE COURT: The witness stated that the Defendant, and this
16 is in quotes, said and again in quotes, "Tomorrow you are going to have
17 sexual intercourse with me whether you want to or not." Is that the
18 exact phrase he used, or did he phrase it differently?

19 THE WITNESS: I don't remember how he phrased it.

20 THE COURT: Follow up on those questions from the State?

21 MS. DIGIACOMO: Thank you.

22 FURTHER REDIRECT EXAMINATION

23 BY MS. DIGIACOMO:

24 Q All right. Meily, so when he made the comment to you about
25 having to have sexual relations, you can't remember the exact phrasing,

1 but did he speak to you in Spanish or English?

2 A Spanish.

3 Q Did he always speak to you in Spanish?

4 A Yes.

5 Q Okay. And so when you are saying what he said, you're
6 translating that into English for us?

7 A Yes.

8 MS. MACHNICH: Objection. Leading.

9 THE COURT: Sustained.

10 MS. DIGIACOMO: Okay.

11 BY MS. DIGIACOMO:

12 Q I guess just tell us exactly what you do remember that he
13 said?

14 A I remember him putting, tomorrow sexual -- well, sex, if you
15 want it or not.

16 Q Okay. Do you remember when you talked to the police, you
17 said -- you told them relations, sexual relations?

18 A Yes.

19 Q Is that what he said?

20 A No.

21 Q Okay. That's just the way you translated it to English?

22 A Yes.

23 Q Now, that long question that one of the jurors asked that you
24 needed help from the interpreter about whether or not you used your
25 period as a lie or a way to get out. You answered yes, but what did you

1 mean?

2 A That I used that as a way to get out from him hurting me.

3 Q Okay. And from him --

4 A To stop.

5 Q And that was the day where he inserted his finger or his
6 tongue into your vagina?

7 A Yes.

8 Q Now, you testified yesterday, I believe it was, about that
9 incident. And you said when he got up, when the baby cried and
10 stopped it, he used his t-shirt to wipe his mouth.

11 A A tissue.

12 Q A t-shirt.

13 A Tissue.

14 Q Oh, a tissue.

15 A Yes.

16 Q I am sorry. Okay. So he used a tissue to wipe his mouth?

17 A Yes.

18 Q But it wasn't blood that he had on his mouth?

19 A No.

20 Q Okay.

21 MS. DIGIACOMO: Nothing further.

22 THE COURT: Follow-up from the Defense?

23 FURTHER RECROSS-EXAMINATION

24 BY MS. MACHNICH:

25 Q Meily, with regard to the tissue you just mentioned, it's your

1 testimony now that that occurred on July 11th?

2 A Yes.

3 Q Did you keep that tissue to give to police?

4 A No. He threw it away.

5 Q Did you tell police there may be a tissue?

6 A No.

7 MS. MACHNICH: Nothing further. Thank you.

8 THE COURT: Thank you. You may step down.

9 Ladies and gentlemen, we're going to take a short recess so
10 we can set up some IT. The next witness is testifying via video
11 conference, correct?

12 MS. DIGIACOMO: Yes, Your Honor.

13 THE COURT: Okay. It should, you know, we should be
14 ready. We've got the IT guy here. So it'll only hopefully be five minutes.

15 During this recess you're admonished, do not talk or
16 converse amongst yourselves or with anyone else on any subject
17 connected with this trial or read, watch or listen to any report of or
18 commentary on this trial or any person connected with this trial by any
19 medium of information, including without limitation, newspapers,
20 television, radio or Internet.

21 Do not form or express any opinion on any subject connected with
22 the trial until the case is finally submitted to you.

23 THE MARSHAL: Leave your notebooks and pens, please rise
24 for the jury.

25 [Jury out at 3:45 p.m.]

1 [Recess taken from 3:45 p.m. to 3:59 p.m.]
2 THE MARSHAL: Please rise for the jury.
3 [Jury in at 4:00 p.m.]
4 [Inside the presence of the jury]
5 THE COURT: Please be seated. Parties acknowledge the
6 presence of the jury?
7 MR. SPEED: Yes, Your Honor.
8 THE COURT: State?
9 MS. SUDANO: Yes, Your Honor. Yes.
10 THE COURT: Ladies and gentlemen, Dr. Cetl, if I'm saying
11 that correctly, is appearing by video conference, and I want to apologize
12 to her because as you can see, our tech has -- our technology, not the IT
13 guy. He can't do anything about it, has a pointer right in the middle of
14 her face, unless she moves. I don't know what that is. I will inquire -- I
15 mean, I know what it is, but apparently, we can't do anything about it.
16 TECH: We're working on it.
17 THE COURT: Okay. But it won't be done now. So thank you.
18 State, it's your witness, correct?
19 MS. SUDANO: She needs to --
20 THE COURT: Oh.
21 THE CLERK: Please raise your right hand.
22 SANDRA CETL, STATE'S WITNESS, SWORN
23 THE CLERK: Please state and spell your first and last name
24 for the record.
25 THE WITNESS: Sandra Cetl, S-A-N-D-R-A C-E-T-L.

1 THE CLERK: thank you.

2 THE COURT: Proceed.

3 MS. SUDANO: Thank, Your Honor.

4 DIRECT EXAMINATION

5 BY MS. SUDANO:

6 Q Ma'am, where are you testifying from today?

7 A Just outside of Austin, Texas.

8 Q Do you currently live in or around Austin, Texas?

9 A That's correct.

10 Q How long have you been in Austin?

11 A I've lived there for a year and a week.

12 Q A year and a week?

13 A Yup.

14 Q So I guess before we go too far, can you see me and hear me
15 okay?

16 A I can, yes.

17 Q Okay. And there sometimes is a little bit of a delay, so I'll try
18 to give you a break so that you can answer. If you could do the same for
19 me.

20 A Thank you.

21 Q So prior to a year and a week, where did you live?

22 A I lived in Las Vegas, Nevada.

23 Q What was your job here in Las Vegas?

24 A So for about eight years, I worked as a pediatrician that
25 evaluated concerns of child abuse and neglect, both sexual abuse,

1 physical abuse and then also neglectful situations.

2 I also work part time as a pediatrician in the emergency
3 department seeing whatever came in through our triage process. Most
4 of my work was through Sunrise Children's Hospital. And then I also
5 worked twice a week at the Southern Nevada Children's Assessment
6 Center where twice a week we had clinic for concerns of child sexual
7 abuse.

8 Q So before we get into your work at Sunrise and at the
9 Southern Nevada Children's Assessment Center, can you walk us first
10 through your educational background and your training?

11 A I received a Bachelor's of Neuroscience from University of
12 California in Los Angeles. And then I attended medical school at the
13 University of Vermont. After which I attended a pediatric specialty
14 residency at the University of Nevada in the Las Vegas program.

15 Through residency as well as afterwards, I attended training
16 through conferences as well as one on one teaching with a child abuse
17 pediatrician in Las Vegas area at the time.

18 And then I also attended a six week apprenticeship with --excuse
19 me, a six month apprenticeship with her after I ended my residency.

20 And then I continued on for about two and a half years until
21 becoming the director of the program.

22 Q And so you said that, or it sounds like the focus of your work
23 when you were in Las Vegas was as a pediatrician, working specifically
24 in cases of suspected physical abuse or sexual abuse of children; is that
25 correct?

1 A That's correct.

2 Q You said that you worked a couple of different places, you
3 said that you worked at Sunrise Children's Hospital primarily; is that
4 correct?

5 A Yes.

6 Q What were your general duties and responsibilities at
7 Sunrise?

8 A So if any of my colleagues, either from the emergency
9 department, the pediatric intensive care unit or the regular pediatric
10 inpatient floor had concerns about one of their patients, they would
11 contact me as a consultant to evaluate concerns for abuse or neglect.

12 And those were my main -- that was my main duty there. I also
13 took part in education of the staff of students. I had medical students as
14 well as residents that partook in -- well, in one month, two week to one
15 month rotations with me. So there was one on one education as well as
16 teaching classes.

17 And then additionally, I worked part time as an ER physician at
18 Sunrise Children's Hospital's Emergency Department for children.

19 Q And as an emergency room pediatrician, just treating
20 whichever children come into the emergency room when you're on
21 shift?

22 A That's correct.

23 Q You also indicated that a couple of days a week you worked
24 at a clinic at the Southern Nevada Children's Assessment Center; is that
25 correct?

1 A Yes.

2 Q What were your duties and responsibilities at the -- can I call
3 it the CAC?

4 A Yes, please.

5 Q What were your duties and responsibilities there at the CAC?

6 A So my duties included, as I said, examinations of children
7 where there were concerns of sexual abuse.

8 Additionally, a part of education for different community agencies
9 and took part in several multi-disciplinary teams that would meet on a
10 weekly or bi-weekly basis to discuss concerns of abuse and neglect in
11 the community.

12 Q So we just talked about some of your work at the actual
13 hospital and you would just treat whichever patients happened to be
14 there when you were the emergency room pediatrician.

15 How was it that patients were referred to you when you were
16 working at the CAC?

17 A At the CAC, they're referred by outside agencies such as
18 Child Protective Services or law enforcement.

19 Q And so it wasn't an open clinic that anybody could come
20 into; was that fair?

21 A That's fair.

22 Q Now, before we get too far into the examinations that you
23 would conduct at the CAC, can you just give us a very brief anatomy
24 lesson when we're talking about female patients?

25 A Sure. So I would see a pediatric patient. So that would be

1 anywhere from birth to just until 18 years of age. The anatomy for the
2 female actually changes a bit throughout that time frame. And so the
3 general anatomy would include the vaginal area, and I'm going to use
4 my hand kind of as an example.

5 So the vaginal area that we would look at would include labia
6 majora, which are the outer larger lips. Labia minora, which would be
7 the smaller ones. The clitoris and the skin that surrounded it. The
8 urethra. And that's where we pee from. And then the vagina itself,
9 which would be the opening that we're talking about, we're when girls
10 get their periods or, you know, that kind of thing.

11 When we look at the vaginal opening, when I was talking about
12 things change throughout the lifetime, when babies are born, they have
13 a lot of mother's estrogen on board. And so the hymenal tissue, which is
14 like a collar around the opening of the vagina, that tends to be a lot
15 thicker and also less sensitive between the ages of about 2 to about
16 where they start puberty and making their own estrogen. Between those
17 two time periods, the hymen changes a bit to where it's a little bit more
18 thin, possibly more sensitive, but also has a different appearance to it
19 where it's almost translucent or different coloration.

20 And then there's pubertal. So that's once a female starts making
21 her own estrogen, a couple of years perhaps prior to starting her period.
22 And at that time, the hymenal tissue, again, that collar around the
23 opening to the vagina will look a lot thicker. It'll be more kind of wavy.
24 The tissue and the skin looks what we call redundant. So it's almost as if
25 in that opening area there's going to be extra skin surrounding the

1 opening to the vagina.

2 There's a lot of misconceptions about that area itself. So with the
3 hymen, oftentimes people think that it's a wall or a barrier into the
4 opening of the vagina. But in fact, like I said, it's a collar around it. So
5 it's just skin that surrounds the vaginal opening and that skin should
6 have a hole in it, that would be a normal anatomy.

7 And then we also look at the anus and so where we have our
8 bowel movements from.

9 Q You indicated, doctor, that the anatomy for juvenile females
10 changes from the time that they're born up until they complete puberty;
11 is that fair?

12 A Yes.

13 Q Does the progression through maturity and puberty affect
14 how you conduct your examinations?

15 A It can sometimes. It can sometimes limit the -- due to
16 sensitivity can sometimes limit the ability to do something called a
17 speculum exam. So that's the kind of exam that an adult female would
18 have in order to have a pap smear or regular annual exam in which a
19 plastic kind of rounded piece goes inside the actual vaginal canal. That
20 would definitely change how we do that part of the examination or we
21 would not do that part of the examination.

22 Q Fair to say that you conduct examinations on both juvenile
23 male patients and also juvenile female patients; is that fair?

24 A Yes.

25 Q Is there any specific time limit for when an exam needs to

1 take place?

2 A No, not for when an exam needs to take place. We're
3 looking, you know, for any medical concerns that the patient may have,
4 questions that the patient or the parent may have, or a caregiver may
5 have. And also for testing for sexually transmitted infections, which can
6 live in the body without symptoms, often times for long periods of time.

7 And then additionally, any additional problems that they may have
8 going through puberty, having their period and et cetera.

9 So we're looking for medical problems or medical concerns and
10 answering questions and that can take place anytime.

11 Q And so what then is the overall purpose of the examinations
12 that you conduct at the CAC?

13 A For medical management ,evaluation and diagnosis.

14 Q Is part of the reason for the exam also the possibility of
15 locating some sort of physical evidence or findings that would suggest
16 that there was either sexual or physical abuse?

17 A We do definitely look, if there are any injuries, scarring or a
18 problem secondary to sexual contact, and so that would be a component
19 of the examination.

20 Q But fair to say that the primary purpose is for medical
21 diagnoses or follow up treatment that may be necessary?

22 A Correct.

23 Q Before we go too much further, how many examinations do
24 you think that you performed while you were working either at Sunrise
25 or at the CAC?

1 A Just for sexual abuse purposes, I believe 3,000. Anywhere
2 from 3000, 4000 examinations.

3 Q Doctor, where do your typical examinations actually take
4 place? The physical location of them?

5 A Well, at the CAC, we have clinical space. So there's an exam
6 room. There is a nursing as well as my office. There is an area in which
7 we triage patients, so getting their vital signs and a small waiting room.
8 Other examinations that take place can take place in the emergency
9 room setting.

10 And uncommonly, sexual abuse examinations have taken place on
11 both a pediatric medical ward as well as the intensive care unit at
12 Sunrise Children's Hospital.

13 Q Is there anything that affects whether the examination would
14 take place at the CAC or would take place either in the emergency room
15 or the ICU or some other part of one of the hospitals?

16 A At the time that I left the CAC, the last about a year and a
17 half, not necessarily, but prior to that, acute exam. So exams in which
18 the disclosure may have been within hours or days of the actual reported
19 contact. Examinations would take place in the emergency department at
20 Sunrise Children's Hospital because it was better equipped to deal with
21 any acute concerns at the time.

22 Q And so when you're seeing acute, you mean that the exam is
23 taking place close in time to when the abuse took place; is that fair?

24 A Exactly.

25 Q So then for the exams that were not taking place as close in

1 time to the actual abuse, where would those take place?

2 A Yeah. So if it was a week, a month, a year or so and time,
3 then it would take place at the CAC.

4 Q And that would be something that could be scheduled kind
5 of down the road at everybody's convenience?

6 A Yes.

7 Q Why were those exams where the abuse and the actual
8 examination were not happening close in time, why was it sort of
9 feasible to schedule them out a little bit?

10 A Because as we've talked about, that a lot of times, when
11 we're looking at the patient, it's about concerns that they're having at the
12 time.

13 Often times, in fact, about 95 percent of the time, with sexual
14 abuse concerns, the examinations will be normal. And so having the
15 exam further out also means that DNA collection or like a rape kit type of
16 collection would not be completed because there wouldn't be any
17 necessity to it. There wouldn't be very much likelihood of having any
18 kind of bodily fluids to collect or any purpose to conducting that extra
19 examination on a child.

20 Q So you mentioned a couple of different things. So you said
21 that if the exam is happening, kind of removed in time from the abuse
22 itself, you're not likely to find or be able to collect DNA or anything like
23 that; is that fair?

24 A Correct.

25 Q Okay. And why is that?

1 A So just like our skin cells or any cells that are on our body
2 and they change, and they die, and they get removed from the body
3 themselves through bathing and just naturally through the natural kind
4 of process of discharge. For instance, vaginal discharge remove cells
5 from the body.

6 And so if there's anything that's placed on the body, so inside or
7 on the outside of the skin, such as saliva, semen or any other type of
8 fluid that could potentially have evidentiary value, those would more
9 than likely not be there.

10 Research shows that for young children, usually within the first 24
11 to 48 hours, is when any DNA can be collected. And with children
12 who've been through puberty, it can extend up to a week, sometimes
13 longer.

14 Q But certainly months or years down the road, you would not
15 be expecting to recover DNA evidence that could be used for purposes of
16 a criminal case?

17 A Correct.

18 Q So that was the DNA side of things. You talked also about
19 you're looking for physical injuries or scarring or things like that to a
20 child; is that fair?

21 A Yes.

22 Q Would you still expect to see physical injuries or scarring or
23 things like that if the examination is done weeks or months or years after
24 the abuse took place?

25 A No. The vaginal tissue in the genital tissue itself has a lot of

1 blood vessels running through it. It's also a lot like the skin on the inside
2 of the mouth where if it gets injured, it often heals very quickly.

3 Also, the hymen in and of itself doesn't heal with any kind of scars
4 that can be seen with the naked eye. Potentially microscopically, but
5 we're not, you know, biopsying potential area injuries on small children
6 for ethical reasons.

7 So because of the healing process, most of the -- any finding that
8 could have possibly been there within a day or two of the contact, more
9 than likely would not be noted on an examination.

10 Q Now, this may seem like kind of a silly question, but would it
11 be fair to say that the type of contact or the way that the contact is
12 described can also affect the likelihood of you finding any signs of
13 physical injury or being able to recover any type of DNA or forensic
14 evidence?

15 A Absolutely. If let's say physical contact or sexual contact was
16 rubbing, touching over the clothes or even under the clothes, it'd be very
17 less, you know, a little likelihood of being able to collect anything,
18 especially months afterwards.

19 Additionally, injuries would not necessarily happen. If someone is
20 using lubrication and penetrated the vaginal canal or did it slowly, little
21 by little using smaller objects or body parts and then continuing on to
22 larger ones. Again, the area is a lot like the inside of the mouth. So it's
23 very stretchy, it also heals very well. So even if an injury was created by
24 that method, again, we wouldn't necessarily be able to see it at all if
25 ever.

1 And so the method described is very important, because if things
2 are not traumatic in origin, if they're -- and I mean trauma in terms of
3 actual physical contact, then no injury would be seen at all.

4 Q Now you also mentioned, doctor, that 95 percent of times an
5 examination is normal. Can you explain what you mean a little bit more
6 by that?

7 A Yeah, sure. So colleagues that have undergone a lot of
8 research looking into examinations of children where there were
9 concerns of sexual abuse found -- as well as we found generally at our
10 clinic, that both in the acute setting as well as the non-acute setting. So
11 that's the ER visit versus the clinical visit, perhaps weeks, months or
12 years later, that the great majority of them were completely normal.

13 And it's often said that it's normal to be normal because of a lot of
14 the misconceptions of the female anatomy. A lot of times people think
15 that there's ability to see virginity or changes in the vaginal tissue due to
16 some kind of penetrating force, especially from a penis. And that is not
17 -- that's just not true.

18 And so it is often times needed to, you know, explain in various
19 settings that it's normal to have a normal exam when there are concerns
20 of child sexual abuse. And the fact that the exam is normal, doesn't rule
21 out the possibility of there being sexual contact.

22 Q And so it's normal to be normal whether a child presents for
23 the examination right after the abuse happened or if it's weeks, months,
24 years down the road?

25 A Correct.

1 Q Now I want to switch gears and talk to you specifically about
2 this case. November 14th of 2016, were you working at the CAC at that
3 time?

4 A Yes, I was.

5 Q And did you have occasion to perform an examination on a
6 patient by the name of maybe Meily Moran?

7 A Yes, I did.

8 Q Was that examination conducted at the CAC or at the
9 hospital or somewhere else?

10 A At the CAC.

11 Q And you talked to us a little bit before about patients are
12 referred to the CAC from an outside agency, was that the case in this
13 particular patient as well?

14 A Yes, the referral came from both law enforcement and child
15 protective services.

16 Q So would it be fair to say that prior to coming for the
17 appointment with you, the patient has already had some sort of a contact
18 with either CPS or a law enforcement agency?

19 A Yes.

20 Q So do you have any information about the case or the patient
21 prior to yourself beginning the exam?

22 A Usually it's just some limited information, possibly who the
23 alleged perpetrator is. Sometimes I have some more details and the
24 type of contact that the patient is reporting, but oftentimes it's limited
25 demographic information.

1 Q And in this particular case, do you recall whether you had
2 demographic information, or you had a little bit more information about
3 the information that had been reported to law enforcement or CPS
4 previously?

5 A In this case, I believe I had mostly demographic information,
6 but it did include an alleged perpetrator of a sexual abuse and some
7 behavioral concerns that the patient was displaying.

8 MS. MACHNICH: Your Honor, may we briefly approach?

9 THE COURT: Yes.

10 [Sidebar begins at 4:24 p.m.]

11 MS. MACHNICH: Your Honor, we do see a notation of
12 behavioral concern, PTSD listed in the report. There's been no mental
13 health expert noticed in this case. This doctor is not a mental health
14 expert, nor did she diagnose anyone -- make any diagnosis as such.

15 Therefore, discussion of her mental health condition given
16 the lack of other evidence presented in this case or to be presented in
17 this case would not only be inappropriate, but extremely overly
18 prejudicial.

19 We were not given any opportunity to call our own mental
20 health expert or have her examined. She's not -- I don't know how far
21 they intend to go with this line of questioning, but we're very troubled
22 that they might be talking about behavioral concerns that this witness
23 received via hearsay that we then have no ability to cross-examine her
24 on.

25 MS. SUDANO: And, Your Honor, the information is provided

1 in the context of statements that are made for purposes of medical
2 diagnosis and treatment.

3 I don't intend to go particularly far down that road, but I do
4 need to clear it up at this point because I asked an open-ended question
5 and that was the information that she provided.

6 They certainly could have noticed an expert to talk about
7 something like that. So I'm just going to follow up with her very briefly
8 when she's talking about behavioral concerns that there was sort of a
9 general concern that -- I don't even know how to phrase it. But there was
10 some sort of change or some sort of effect on her mental health only
11 because she said, behavioral changes, and I need to make that, I guess,
12 clear to the jury that it's not like she's, you know, cutting school or --

13 MS. MACHNICH: Well, Your Honor, they walked into that.
14 What do they think she's going to testify to? Saying PTSD is hearsay and
15 she is not an expert who diagnosed her with this or -- it's simply
16 inappropriate.

17 I can't cross-examine her on --

18 THE COURT: Well, ask her what her qualifications are for
19 that.

20 MS. MACHNICH: But she's not noticed as a mental health
21 expert, Your Honor. She's not disclosed as such. She does not have the
22 training as such.

23 THE COURT: I don't think --

24 MS. MACHNICH: If they're going to start talking about this
25 more --

1 THE COURT: -- her comments so far or --

2 MS. MACHNICH: We're worried about what's next. They
3 were going to ask what's next. Now they've specifically said they're
4 going to follow up with her about behavioral concerns relating to this
5 incident.

6 We're not going to be hearing from anyone else with regard
7 to -- any mental health professionals. None are disclosed. They
8 shouldn't be allowed to go into this with her.

9 THE COURT: So what is your next question then?

10 MS. SUDANO: I can lead her, but I would follow-up with her,
11 what you say behavioral concerns, that it's something in the area of
12 mental health. Because I don't want the impression to be --

13 MR. SPEED: No.

14 THE COURT: If somebody's -- if she's being reported to that,
15 this is a -- I think she's qualified to talk about what she is currently talking
16 about. And if it was reported to her, she's not getting psychological
17 diagnosis, I don't think.

18 MR. SPEED: According to her report, it isn't, Your Honor.
19 We've obtained her report and she --

20 THE COURT: What does it say in her report?

21 MR. SPEED: That she makes at least one reference to post-
22 traumatic stress disorder in the report. And according to Dr. Cetl's
23 testimony right now, she's only been given preliminary information
24 about the patient. There's no way that she'd be able to testify about
25 PTSD unless the information was reported to her by someone else who

1 uses statements for medical diagnosis or treatment aren't the person
2 who is qualified to make that kind of a statement.

3 MS. MACHNICH: And she's not -- and they're not subject to
4 cross-examination. So there's confrontation clause issue. They haven't
5 noticed anyone.

6 THE COURT: Do I have to say yet for the 60th time? Thank
7 you.

8 MR. SPEED: Understood, Your Honor. I apologize.

9 THE COURT: All right. So they put in there, in her report it
10 says, what about PTSD.

11 MS. MACHNICH: It was reported to her that there were
12 symptoms of PTSD. She has not opined that. She will not be opining
13 that. They have disclosed no witness to discuss that.

14 THE COURT: She's not opining that she observed symptoms
15 of PTSD?

16 MS. MACHNICH: Nor is she qualified to do so. She's not a
17 mental health professional.

18 THE COURT: I don't --

19 MS. MACHNICH: She is a pediatric SANE examiner. That
20 was not part of the examination and it's not included in her expert
21 disclosure.

22 THE COURT: I don't think -- ask her if she's qualified to talk
23 about that. If she's qualified --

24 MS. MACHNICH: Your Honor, that's beyond the scope of
25 her --

1 THE COURT: That's what --
2 MS. MACHNICH: It's beyond the scope of her disclosure.
3 THE COURT: All right. That's my ruling, counsel.
4 MS. MACHNICH: That is not in her disclosure.
5 THE COURT: That's what they -- she either is qualified to or
6 not. And it's in the report that she testified about that.
7 MS. MACHNICH: That she --
8 THE COURT: You have the obligation of investigating it.
9 MS. MACHNICH: Your Honor --
10 THE COURT: If she says, I think she has PTSD. Isn't that
11 what it says?
12 MS. MACHNICH: No.
13 MR. SPEED: No.
14 MS. MACHNICH: It says, she was reported.
15 THE COURT: Get me the report. Get me the report. So
16 where am I looking?
17 MS. MACHNICH: Upper left.
18 THE COURT: Then we have to ask her outside the presence if
19 she's qualified to talk about that.
20 MS. SUDANO: And, Your Honor, if I can be heard --
21 THE COURT: For the record, although it's not an exhibit I
22 assume, it says, PTSD type symptoms.
23 MS. SUDANO: Can I be heard?
24 THE COURT: I don't know if she's qualified. That's --
25 MS. SUDANO: Can I be heard, Your Honor?

1 THE COURT: Sure.

2 MS. SUDANO: Because --

3 THE COURT: Is this at least for attached as a Court's exhibit
4 so the Supremes can know what we're talking about?

5 MS. MACHNICH: Absolutely, Your Honor. I can have a
6 different copy. I believe this is clean.

7 THE COURT: Well, is that an extra one?

8 MS. MACHNICH: It can be.

9 THE COURT: All right. Attach this as a Court's exhibit. All
10 right. Yeah?

11 MS. SUDANO: So that information was information that
12 came to her as a statement that was made during the course for
13 purposes of medical diagnosis and treatment. She had that information,
14 she relied on that information. One of the things that she did afterwards
15 was refer her for additional mental health counseling based on her
16 concerns about the way that she presented there.

17 So that's the extent of where I'm trying to go with this. I
18 think that she is qualified to observe whatever she observed about the
19 patient and have that information that leads her to make a follow-up.

20 It's not hearsay. It's not inappropriate to bring that in. It's
21 not exceeding the scope of her --

22 THE COURT: So the exception what she tells her, her
23 medical treatment --

24 MS. MACHNICH: Your Honor, this was something that in the
25 section that you'll note, on the page you were referring to, it's something

1 that was reported to her. I don't even know if it was reported by Meily or
2 if it was reported by her mother, if it was reported by Detective Huth or
3 was --

4 THE COURT: Okay.

5 MS. MACHNICH: -- recorded by Officer or CPS Officer Keith
6 [phonetic].

7 MS. DIGIACOMO: She's yelling.

8 MS. MACHNICH: I'm not yelling. Thank you, counsel.

9 THE COURT: And she had referred her to -- she can refer her
10 to somebody who is an expert in that area?

11 MS. MACHNICH: But she -- there is no expert disclosed in
12 this case regarding mental health.

13 THE COURT: This isn't --

14 MS. MACHNICH: The State has not disclosed an expert in
15 this case. This was a report by someone else and she was -- she is not a
16 mental health expert. She is not qualified to opine to that.

17 THE COURT: She's not treating her, but can she refer her to
18 somebody?

19 MS. MACHNICH: I'm sure she can refer.

20 THE COURT: I think, absolutely.

21 MS. MACHNICH: She can refer to somebody, but I don't
22 believe she has any independent information beyond patient seemed
23 uncomfortable, because she's supposed to document all of her findings
24 in that report and that's the extent of what's in that report.

25 MS. SUDANO: That seems like a great area for cross.

1 THE COURT: You can ask it. It's overruled. I'm allowing it.

2 MS. SUDANO: Thank you.

3 [Sidebar ends at 4:32 p.m.]

4 MS. SUDANO: May I proceed, Your Honor?

5 THE COURT: Yes. The objection's overruled.

6 MS. SUDANO: Thank you.

7 BY MS. SUDANO:

8 Q All right. Sorry about that Dr. Settle. So when we had just
9 taken our break there, you had mentioned that when this particular
10 patient came in, the information that you had was information about the
11 perpetrator, and then information about behavioral concerns; is that
12 correct?

13 A Correct.

14 Q When you're talking about behavioral concerns, would it be
15 fair to say that you're talking about mental health concerns that had
16 exhibited themselves in Meily Moran?

17 A Yes.

18 Q And that was about the extent of the information that you
19 had at the time that your examination began; is that fair?

20 A Yeah, that's fair.

21 Q So are you the first person that a patient would see when
22 they come to the CAC?

23 A It really depends, and it really depends on the situation. So,
24 sometimes the -- I wouldn't be the first person, they may see a forensic
25 interviewer, law enforcement, or child protective services. And

1 depending on, again, the circumstances and the stability of the child, it's
2 possible that they would see mental health prior to me. Sometimes I'm
3 the one that's referring them out or trying to help in the set up process.
4 So, it really depends.

5 Q Okay. In this particular case, would Meily Moran have seen
6 either a nurse or someone else to kind of get triage information prior to
7 you beginning your examination?

8 A Yes. During any examination, I -- the two nurses that I
9 worked with would get basic medical information, any medications, any
10 developmental concerns, allergies, and then also the triage information
11 of heart rate, blood pressure, weight, height, and that sort of
12 information.

13 Q Would it be fair to say that prior to your examination coming
14 in, there's at least some information that's provided to the patient,
15 themselves, about the nature and what the exam is for and how it's
16 going to go?

17 A Yeah, that actually takes the most amount of time because
18 for these exams, we explain everything. So, usually the nurses will go
19 through the entire process of the examination in the examination room
20 while the child has their clothing on. They will show them anything that
21 we might use during the exam process, such as Q-Tips.

22 Also there is photo documentation, so we take pictures of the
23 examination as well, just as the genital area, and so I would answer any
24 questions that the child, or if that child wants a parent in the room with
25 them, any questions that that parent might, you know, have as well.

1 And then after that, when I come in the room, I also explain
2 everything. By that time, the child is gowned, and then they are on the
3 exam table.

4 Q So, in this particular -- well, let me a general first. Do
5 patients have parents with them in the exam room or are the parents
6 outside?

7 A Sometimes. It depends on the patient's age and
8 development. So, if it's a two-year-old, their parent's going to be in
9 there, but if it's a ten-year-old or 11-year-old, 12-year -- somebody who
10 can tell us, hey, I really don't want my mom or dad in that room, then
11 often times we'll ask the parents to step out, but about half the time,
12 adolescents and teenagers want a parent there, sometimes they don't,
13 about half -- maybe about half the time.

14 Q So, you indicated that when you come into the room, the
15 patient's already in a gown and up on the exam table. So how does
16 your --

17 A Correct.

18 Q -- exam actually take place?

19 A First, so the patient's in what we would call supine positions,
20 so they're laying on their back. The exam table has stirrups, and so
21 depending on, again, their age and kind of their ability to utilize the exam
22 table, but for older kids, we would use stirrups and they would rest their
23 legs on there, and that way, when the gown comes up and over their
24 legs, anybody who is with them during the exam process is unable to
25 see, so that modesty is kept for that child.

1 I will sit in front of the legs that are relaxed and open, and then
2 using gloved hands, I would move the tissue around gently in order to
3 be able to see all of their front parts. Also, if a sexually transmitted
4 infection testing is to be done, I usually use Q-Tips and I will wipe the
5 various area with Q-Tips.

6 All along, we have one nurse, who is usually at the head of the
7 table with a patient for any support that he or she needs, and then
8 there's one nurse that's supporting me and helping hand out -- hand me
9 any supplies that I need.

10 After that part is over, the patient then changes, and if we need to
11 do blood work in addition, at that point they will exit the room and go to
12 our other areas where --

13 Q So, switching back to this particular examination with Meily
14 Moran on November 14th, do you recall Meily's demeanor when you
15 came into the room to begin your examination?

16 A I don't have an independent recollection of her demeanor,
17 but through my notes, reviewing my notes, she was very apprehensive
18 to participate, which, when I write that, means that she was probably
19 backing off of the exam table, moving a lot, very uncomfortable to, you
20 know, progress through the examination, itself. So, myself and staff
21 would be talking to her about the various parts of the exam, and if
22 there's anything she absolutely refused to do, we would never force that
23 upon her, but I, in my notes, I did discuss that she was very
24 apprehensive.

25 Q Would that be more than the case for a normal 13-year-old

1 patient that you're examining?

2 A Yeah, I mean everybody's kind of nervous going into these
3 examinations, and that's kind of a -- kind of a given. I think even adults
4 are nervous when, you know, females have to go for their annual exams
5 or -- annual exams. And so, and some nervousness is expected, but that
6 would be noted as kind of a normal behavior with a cooperative patient.

7 Q Now did Meily want somebody in the room with her during
8 the examination?

9 A Yeah. I believe -- she had her mother in with her.

10 Q And you indicated about 50/50 on whether or not a kid that
11 age would want their parent present?

12 A Yeah. I mean I -- I mean I never really wrote down any
13 numbers, but I would say about half the time they did, half the time they
14 didn't.

15 Q And did you conduct your examination on Meily Moran that
16 day?

17 A Yes.

18 Q Okay. Were there any physical findings or any physical signs
19 of sexual abuse?

20 A No.

21 Q All right. And you had, again, the information that would
22 have been relayed from law enforcement about kind of the timing of the
23 disclosure, would that be fair?

24 A I believe so. I don't recall if in this case I had a specific
25 timing. I usually would write something like that down.

1 Q Was the fact that you did not find any physical signs of
2 sexual abuse surprising or concerning to you in this particular case?

3 A No.

4 Q Okay. Why is that?

5 A Like we talked about before, it's fairly common to have no
6 signs or symptoms of sexual abuse, especially depending on the type of
7 contact, if it was rubbing, touching, licking, anything of that sort, I
8 wouldn't expect any findings at all, and then if something was more
9 traumatic in nature, the hymenal tissue, as well as the tissue surrounding
10 it, so just the genital area overall heals very well and often times doesn't
11 have any type of scars or missing tissue, or anything that would indicate
12 that there was trauma.

13 Q Did you also conduct testing for STIs and then conduct your
14 complete bloodwork in this particular case?

15 A Yeah. So both the swabs, and we do cultures, so just like a
16 throat culture, we swab the area, the vaginal area, as well as the anal
17 area, and send it to a laboratory to conduct a culture to see if any
18 bacteria grow, and those were for sexually transmitted infections, like
19 Chlamydia and Gonorrhea, and then we did bloodwork for HIV, Syphilis,
20 as well as for Hepatitis. And I sent her for further testing unrelated to
21 any concerns of sexual abuse at that time.

22 Q Okay. Anything that came back from any of those tests?

23 A Everything was negative.

24 Q Okay. Now, did you also have a history that -- from the
25 patient, that there was a prior surgery that had taken place involving

1 her?

2 A Yes. So, her ovary, so each female is typically born with two
3 ovaries and the ovaries are connected along -- kind of a network of like a
4 tube system, and sometimes that can twist around itself, that's called
5 torsion, so she had had that on her left side and her left ovary had to be
6 surgically removed as the torsion had gone on so long that it basically
7 killed all the blood flow and killed the tissue, itself. So, she had had an
8 ovarian torsion with removal.

9 Q And did you also have some information that she had had
10 kind of painful menstruations as part of your examination? Was that part
11 of the history that you received?

12 A Yes. So she and mom had indicated that sometimes she
13 would get two periods in one month, sometimes it would be one, and so
14 they kind of went over the last several months and the irregularity in her
15 periods.

16 Q So, Doctor, at the end of your examination of this patient,
17 Meily Moran, did you make any recommendations?

18 A Yes. I recommended -- it appeared that she was going
19 to -- she was having some kind of counseling with a therapist, so I
20 recommended she continue that, but I also recommended that a
21 psychiatrist or a medical doctor might benefit her treatment overall,
22 especially seeing how nervous and how anxious she was during the
23 examination. Recommendations are always to follow-up with her
24 primary care provider.

25 I also recommended and wrote a referral for her to receive an

1 ultrasound of the pelvic area, because she was continuing to have pain
2 on that left side, and it could be from a variety of causes, especially
3 having surgery prior. So she was sent for an ultrasound, and then I
4 recommended to, you know, return with any questions or concerns,
5 which is always something that I talk to parents about.

6 Q Thank you, Doctor.

7 MS. SUDANO: Your Honor, I don't have any additional
8 questions.

9 THE COURT: Cross-exam?

10 MS. MACHNICH: Yes, Your Honor. Thank you.

11 CROSS-EXAMINATION

12 BY MS. MACHNICH:

13 Q Dr. Settle, good afternoon.

14 A Good afternoon.

15 Q It's fair to say you can't see us, we can see you?

16 A I can see you and you can see me.

17 Q Oh, fabulous, we did get that worked out. Great.

18 Okay. All right. May I ask, before we begin, what documents
19 do you have at your disposal to review as part of this examination and
20 case?

21 A I have the medical record that accompanied her examination.
22 I don't have any of the pictures.

23 Q Okay. So, you have the, whatever --

24 A It would be -- yeah, it's labeled Southern Nevada Children's
25 Assessment Center. There's three pages of nursing notes, and then

1 there would be Ultrasound Requisition, and, I believe, four pages of my
2 notes.

3 Q Okay.

4 A No, five pages of my notes, excuse me.

5 Q Fantastic, we have the same thing. Just making sure we're
6 on the same page. And you don't have anything else?

7 A No.

8 Q Okay, perfect. All right. So, as you covered during your
9 direct examination, the reason for this exam was a referral from CPS and
10 the Police Department for a report of sexual abuse?

11 A Correct.

12 Q And part of your job is to completely and accurately
13 document everything reported to you, correct?

14 A Yes.

15 Q And as we've heard you note, you don't have independent
16 memories of every part of this exam, or any part of this exam,
17 necessarily, but you do have notes from your examination?

18 A Correct. Not from this patient, I can't independently
19 remember.

20 Q And that's fair, because you've done, you said what,
21 thousands of these?

22 A Correct.

23 Q And also, it's your job in the reports that you prepare and the
24 notes that you take to document all of the physical findings that you see?

25 A Yes.

1 Q And anything else that comes up during the examination
2 process?

3 A Correct.

4 Q All right. So, in this case, you had information that the
5 alleged abuse was not acute, correct?

6 A Yes.

7 Q Okay. And what that means, as the State covered with you
8 briefly, was that it did not occur within the past, approximate week, yes?

9 A Correct, yes.

10 Q All right. Are you aware of when police were contacted in
11 this case?

12 A I could guess, based on the event number, but no, not really.

13 Q Please don't guess. So, the information that you received
14 was that you were not looking at acute abuse of any type?

15 A Correct.

16 Q Okay. And you had testified on direct that ideally a sexual
17 assault exam will be done within 24 to 48 hours to collect the most
18 evidence?

19 A For a pre-pubertal child and for a child who's gone through
20 puberty, about one week.

21 Q Okay. And so as part of the process within the Southern
22 Nevada Children's Assessment Center, you are typically referred patients
23 for sexual assault exams for acute exams, when the staff has learned
24 that the abuse had happened close in time to the disclosure?

25 A Well, at that time at the CAC, we were not referred any acute

1 exams, no, that would go to the Emergency Department.

2 Q Okay. So, the process of -- your knowledge of the process
3 was that if police were to learn of acute abuse, and acute meaning within
4 a week, they would refer the complaining witness to the ER?

5 A Yes.

6 Q And that would be for a sexual assault exam, correct?

7 A Correct.

8 Q And that would be to preserve the evidence that could be
9 found therein in a very timely manner?

10 A From their purposes, yes.

11 Q All right. So, let me see. As you testified on direct, with
12 non-acute allegations, it is hard, if not impossible, to collect evidence
13 from a patient's body?

14 A Yes, correct.

15 Q Okay. And the physical signs of abuse are greatly reduced as
16 time passes?

17 A Yes.

18 Q Okay. Also, as you said, after several days, a day or two,
19 several days, the body will heal itself?

20 A Correct.

21 Q And the DNA evidence degrades and disappears over time?

22 A Absolutely.

23 Q Okay. Now, it is fair to say that there are situations where
24 sexual abuse leaves findings, correct?

25 A Yes, there are.

1 Q Absolutely. And that's why you do these exams?

2 A I mean to some extent, but also to deal with any of the other
3 ramifications or any follow-ups that the child may need, but one part of
4 the exam is looking for any findings that may have occurred due to the
5 type of contact that they are alleging.

6 Q All right. Let me see here. Now, there is obviously evidence
7 that can be collected in addition to evidence of traumatic penetration to
8 the vaginal area, correct?

9 A How do you mean?

10 Q Like you can swab the area for DNA?

11 A Yes.

12 Q Okay. And it is possible, but it's typically not done outside of
13 approximately a week?

14 A Correct.

15 Q Okay. And also, let me see. Oh, if you're swabbing the
16 region for DNA, it can be that DNA in someone's vaginal or anal region
17 can come from semen or sperm, correct?

18 A Potentially, yes.

19 Q And it could also come from saliva?

20 A Yes.

21 Q Right. And it could also come in the form of, as you
22 described on direct, touch DNA?

23 A I didn't discuss touch DNA. It wasn't something that was
24 available at that time. I don't even know if they're collecting for that
25 now.

1 Q Okay. So, your testimony is that if there's a touching, DNA
2 does not come off one person and transfer from one to another?

3 A Scientifically, yes, I do believe that that is what occurs. What
4 the testing capabilities are and what the realistic testing that is done is, I
5 don't believe that that is something that is happening.

6 And I would speak to evidence collection only in that we collect the
7 DNA swabs in the event that there are concerns that are acute because
8 we are already doing an examination. All of that is going into an
9 envelope into a locker, and then that's collected by the crime scene, so
10 that analysis and what further they do to that, those swabs in that kit, is
11 not under my purview.

12 Q Absolutely fine. But during an acute exam, if a patient
13 reports, for example, that an assailant kissed or licked a part of her body,
14 you can swab that part of her body for later DNA testing?

15 A Yes.

16 Q Okay. And no swabbing of this nature was done in this case,
17 correct?

18 A No.

19 Q Okay. Now, let's see here. Now there are a couple different
20 sections of your report that concern your medical diagnosis and opinion,
21 and the first is the genital and anal medical exam findings, which is
22 Subsection 6, correct?

23 A I believe it's under 6, yes.

24 Q Okay. And there are four separate areas that you have the
25 ability, substantive areas that you have to check off on this, five if you

1 count other. Would that be fair?

2 A Yeah. And actually, the first kind of look at any -- many
3 findings is on Page 2 of my report, and so that would include the actual
4 physical diagrams that they're on, and then there's verbiage on the side
5 of each of the diagrams. And then the next step, actually Subsection 5,
6 and then Subsection 6 is just the explanation.

7 Q Okay. And so it documents your ultimate conclusion,
8 correct?

9 A No, it documents my medical exam findings.

10 Q Okay. Your ultimate conclusion with regard to medical exam
11 findings. I'm sorry, I misspoke, correct?

12 A Okay. Yeah.

13 Q Okay. And so the substantive areas you can check are
14 normal exam, normal variant, which is a lack of physical findings,
15 correct?

16 A Correct.

17 Q Nonspecific findings, which are physical findings that occur
18 in sexually abused children, but also may incur from other causes?

19 A Yes.

20 Q Yeah. Concerning for abuse or trauma is the next
21 checkmark, a box that you can check. Findings that have been noted in
22 children with documented sexual abuse and are consistent with, though
23 not conclusive of sexual abuse?

24 A Correct.

25 Q Okay. And then the final box on that page, with the

1 exception of Other, would be specific physical findings are present that
2 indicate abuse or trauma, meaning sexual abuse contact is very likely?

3 A Yes.

4 Q Okay. And in this case, in Meily's exam, you checked the
5 first, which was the normal exam?

6 A Correct.

7 Q Okay. Now the State was asking you earlier about some of
8 the things that were reported to you as part of the intake process and
9 background in this case, correct?

10 A Yes.

11 Q Okay. And it's fair to say that some of the things that were
12 reported to you were obviously sexual abuse allegations, and the
13 reason she was there?

14 A Yes.

15 Q Okay. And it was also reported to you that she's currently in
16 ninth grade and doing good, when asked about her grades?

17 A Correct.

18 Q Okay. You, yourself are not a mental health professional,
19 correct?

20 A No. I mean there's a part of any general pediatric evaluation,
21 for instance, but I'm not an expert, no. I would always refer out.

22 Q Okay. And you don't have the opportunity to speak with, like
23 children undergoing these type of exams, in depth to learn their history
24 and social history over a long period of time?

25 A I try to as often as possible, but depending on their level of

1 anxiety and how they're doing, I don't always speak to them, and in this
2 case, I did not.

3 Q Okay. So you ultimately referred Meily out for mental health
4 counseling from an actual mental health professional that could give her
5 assistance?

6 A Correct.

7 Q Okay. And you were aware that approximately a year,
8 year-and-a-half prior to your exam, Meily Moran had had fairly
9 significant ovarian surgery, yes?

10 A Yes.

11 Q And, in fact, an ovary was removed?

12 A Yes.

13 Q And situations such as that can be very traumatic to
14 children?

15 A Potentially, if they understand the -- it's like old term, you
16 know, long term consequences of that.

17 Q Now, you briefly discussed with the State that some of the
18 things that were brought to your attention during this exam were Meily
19 having complaints about the regularity in her periods and painful
20 periods.

21 A Correct.

22 Q Okay. And then also, obviously this ovarian torsion surgery
23 that you discussed?

24 A Yes.

25 Q And you're not saying that those are in any way related to

1 any alleged sexual abuse, correct?

2 A Not necessarily, no, I don't. I mean is it possible? I suppose,
3 but no, not something that I would be documenting as a final conclusion,
4 no.

5 Q Okay. In fact, those things were not included as part of your
6 medical opinion findings?

7 A Correct.

8 Q Okay. And all of the blood work and cultures that were
9 performed on Meily Moran were negative?

10 A Correct, yes.

11 MS. MACHNICH: The Court's brief indulgence.

12 BY MS. MACHNICH:

13 Q Dr. Settle, how many times have you testified for the State of
14 Nevada?

15 A A hundred-and-twenty, hundred-thirty maybe.

16 Q Okay. And how many times have you testified for a State
17 entity that may not be the State of Nevada, particularly, but any State or
18 prosecutory agency?

19 A I've been subpoenaed several times. I think I probably
20 testified maybe once, twice, and for another entity, but I, you know, it's a
21 prosecutorial entity, excuse me, not prosecution, it would be more of a
22 defense situation, in Family Court, I would say two or three times, and
23 Justice Courts, when I've been subpoenaed, it never went to court, so
24 none.

25 Q So, in the 8th Judicial District Court of the State of Nevada,

1 you've never testified for the Defense?

2 A I don't believe so, no.

3 Q Okay. Thank you.

4 MS. MACHNICH: The Court's re-indulgence.

5 Nothing further.

6 Thank you, Doctor, we appreciate your time.

7 THE WITNESS: All right. Thank you.

8 THE COURT: Re-direct?

9 MS. SUDANO: Thank you. Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. SUDANO:

12 Q So, Doctor, you were a private medical provider when you
13 were working in Nevada; is that correct?

14 A Yes. I worked for a company called MEDNAX, that had
15 physicians consulting in various departments, in Sunrise Children's
16 Hospital and other areas like the CAC.

17 Q And so when you're coming to court, you're coming to court
18 to testify in your capacity as a private medical provider; is that fair?

19 A That's correct.

20 Q You indicated that you testified in the defense context in
21 Family Court; is that correct?

22 A Yes.

23 Q And you can be subpoenaed or brought into court by either
24 side, just like any other witness; is that fair?

25 A Yeah. I mean I've done CLE's for defense, as well as for

1 prosecution. I mean I don't care either way, you guys just ask questions
2 in a different order.

3 Q And when you say CLE's, you mean that you've done
4 training and provided education to Prosecutors and Defense attorneys?

5 A Yes.

6 Q All right. And the information that you're providing in your
7 medical experience doesn't change based on who's asking a question;
8 would that be fair?

9 A Yeah, absolutely.

10 Q And so you were asked some questions just a moment ago
11 about the medical conclusions that you made in this particular case; is
12 that correct?

13 A Yes.

14 Q All right. So your medical exam findings. And so you
15 indicated that you had checked the normal exam box in this particular
16 case, which goes on to indicate that the lack of physical exam findings
17 does not exclude the possibility of sexual abuse; is that correct?

18 A Yes, in terms of how I document my medical exam findings,
19 yes.

20 Q Okay. And then you also indicated previously that in about
21 95 percent of cases, you have a normal finding; is that correct?

22 A That's correct.

23 Q Okay. So 95 percent of the times, that's the box that you're
24 checking; is that fair?

25 A Yeah.

1 Q And so you also indicated that -- or you were also asked
2 some questions, I'm sorry, about whether you're more likely to recover
3 evidence or DNA or something along those lines, or to have physical
4 findings in an acute exam setting. Do you recall that?

5 A Yes.

6 Q So I just want to clarify. Even in an acute setting, you're not
7 likely to have physical findings?

8 MS. MACHNICH: Objection, Your Honor. She's leading this
9 witness.

10 THE COURT: Sustained.

11 MS. MACHNICH: Thank you.

12 BY MS. SUDANO:

13 Q So, Doctor, even in an acute setting, are you likely to have
14 evidence or physical findings?

15 A I would say physical findings, no. Evidence, again, that's out
16 of my scope. I would use the Q-Tips and send them to, you know, the
17 entity that deals with that.

18 Q Okay. So you don't actually know what comes of anything
19 that you may swab for DNA or something along those lines?

20 A I might get feedback sometimes, but overall, no.

21 Q Right. But as far as what you can actually see or observe as
22 a medical professional, not likely to have finding even in an acute -- in an
23 acute exam.

24 MS. MACHNICH: Objection.

25 THE WITNESS: Correct.

1 MS. MACHNICH: Asked and answered, and leading.

2 THE COURT: Overruled.

3 BY MS. SUDANO:

4 Q I apologize, Doctor, you can answer that one.

5 A Correct.

6 MS. SUDANO: Thank you.

7 Nothing further.

8 THE COURT: Anything else?

9 MS. MACHNICH: No, thank you, Your Honor.

10 THE COURT: Questions from the jury? Raise your hand if
11 you have any questions. No questions?

12 Thank you, Doctor. We're done.

13 THE WITNESS: Thank you.

14 And counsel approach.

15 [Sidebar begins at 5:03 p.m.]

16 THE COURT: I don't want to stay until -- didn't you guys tell
17 me 20 minutes.

18 MS. SUDANO: I know.

19 THE COURT: Okay. Four minutes. Anything else? Now
20 we're -- right, 8:30.

21 MS. DIGIACOMO: Your Honor, yes we sent the interpreter
22 and our next witness home about ten minutes ago, so.

23 THE COURT: Yeah. Well, it's already 5:00, so.

24 MS. DIGIACOMO: Yeah.

25 THE COURT: All right. Thank you.

1 MS. DIGIACOMO: Thank you.

2 THE COURT: See you in the morning.

3 [Sidebar ends at 5:04 p.m.]

4 THE COURT: All right. Ladies and gentlemen, 8:30. Okay.

5 [Sidebar begins at 5:04 p.m.]

6 MS. DIGIACOMO: You said goodbye to us, but I want to
7 make a record when we're done, if that's okay.

8 THE COURT: Okay.

9 MS. DIGIACOMO: Thank you.

10 [Sidebar ends at 5:04 p.m.]

11 THE COURT: During this recess, you're once again
12 admonished do not talk or converse amongst yourselves or with anyone
13 else on any subject connected with this trial, read, watch, or listen to any
14 report of or commentary on the trial or any person connected with this
15 trial by any medium of information including, without limitation,
16 newspapers, television, radio, or internet. Do not form or express any
17 opinion on any subject connected with the trial until the case is finally
18 submitted to you. Don't talk to anybody about the case. Don't talk to
19 anybody who may even remotely know anything about the case. Don't
20 do any research. Now, we talked about medical stuff. Don't go Google
21 anything.

22 See you at 8:30 in the morning.

23 THE MARSHAL: Leave your notebook and pens. Make sure
24 you grab all your personal items. Check underneath your chairs and
25 make sure you got your wallet, your purse.

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[Jury out at 5:05 p.m.]

[Outside the presence of the jury]

THE COURT: Okay. We're on the record outside the presence. You wanted to make -- bring something up?

MS. DIGIACOMO: Yes, Your Honor. Pursuant to NRS 51.035(2)(d), the State intends to introduce into evidence the preliminary hearing transcript as well as parts of her testimony at the -- what's we've been calling the Family Court hearing or the CPS hearing.

So I just wanted to give Defense counsel a heads-up. We have gone through the transcripts and redacted out, you know, the stuff that is not admissible. So I just wanted to give them copies, so they have the night to look at it.

THE COURT: Okay.

MS. DIGIACOMO: What it is, is we're -- the testimony of a witness who has testified and then had the opportunity to cross-examine them regarding a transcript of testimony given under oath, or at a trial, or at hearing, is admissible. It's non-hearsay. And so we are going to move to admit these in the morning, but because redactions --

THE COURT: Of course.

MS. DIGIACOMO: -- need to be made to them, I'm giving them a copy of what our redactions are.

THE COURT: All right. We'll talk about it in the morning.

MR. SPEED: There will be objections before that time, Your Honor. Thank you.

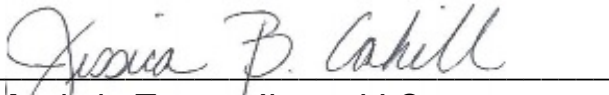
THE COURT: Anything else?

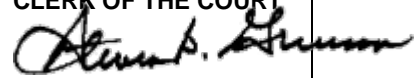
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MS. DIGIACOMO: Not by the State.
THE COURT: Defense?
MR. SPEED: No, Your Honor.
MS. MACHNICH: Not at this time. Thank you.
THE COURT: See you bright and early.
MS. DIGIACOMO: Thank you.

[Proceedings concluded at 5:07 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.


Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,
9 Plaintiff,

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

10 vs.

11 GUSTAVO ADONAY GUNERA-
12 PASTRANA,
Defendant.

13
14 BEFORE THE HONORABLE RONALD J. ISRAEL
DISTRICT COURT JUDGE
15 WEDNESDAY, JUNE 12, 2019

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 7**

17 APPEARANCES:

18 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.
MICHELLE SUDANO, ESQ.

20 For the Defendant:

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

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25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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Las Vegas, Nevada, Wednesday, June 12, 2019

[Case called at 8:39 a.m.]

[Outside the presence of the jury]

THE COURT: Good morning. Please be seated.

MR. SPEED: Good morning, sir.

THE COURT: C-318461, State vs. Gunera-Pastrana.

MR. SPEED: Good morning, Your Honor. Kevin Speed for Mr. Gunera-Pastrana, who is present. I'm also here with Tegan Machnich.

MS. DIGIACOMO: Sandra DiGiacomo and Michelle Sudano, on behalf of the State.

THE COURT: Good morning. What do we have this morning?

MS. DIGIACOMO: Okay. We have a couple of things, Your Honor. The State has an amended information that I would like to propose based upon Ms. Moran's testimony.

Originally, we had Counts II and III charged with dates between June 1st and June 30th, and then Count IV was charged on July 11, 2016, but based upon her testimony saying that the incidents were flip-flopped, we're asking to amend Counts II, III, and IV to the timeframe of June 1st, 2016 and July 11th, 2016. And this is still encompassed within the overall timeframe that is on Page 1, which has not changed.

[Pause]

MR. SPEED: Your Honor, the only objection that we have

1 is -- well, I shouldn't say only, there are a few. We object to the late
2 notice of the flip-flopping the dates of the charges.

3 Also, the State shouldn't be allowed to just pick and choose
4 whenever they say something happens after they've submitted their
5 pleading and we prepared our defense in this case. I believe it amounts
6 to a deprivation of due process for Mr. Gunera-Pastrana for the State to
7 say well, we believe something happened one day, and we're pleading
8 with requisite specificity.

9 But then after we hear from our chief witness in the trial and
10 we adduce this confusing testimony from our child, the alleged victim,
11 well, we'll amend our complaint and say that the dates of the offenses
12 conform with what she finally was able to testify to.

13 MS. DIGIACOMO: And, Your Honor, if I can be heard?

14 THE COURT: Go ahead.

15 MS. DIGIACOMO: Okay. Your Honor, Nevada is a notice
16 pleading State and the State can amend the information at any time
17 before a verdict, as long as no new or additional offense is charged, as
18 long as the substantial rights of the Defendant are not prejudiced, and
19 the State's submits to you neither of those have happened here. We're
20 not changing the crime, we're just expanding the timeframe for Counts
21 II, III, and IV from what she was -- the way we originally pled it, based
22 upon how she testified at preliminary hearing.

23 On Page 1, Line 23, the entire incident occurred between
24 August 1st, 2015 and July 11th, 2016. So they were on notice that we
25 were alleging these incidents occurred during this timeframe, and based

1 upon the testimony of Ms. Moran, all we're doing on Counts II and III is
2 extending the time period that they could have happened from June
3 30th, just to July 11th, adding 11 days. And then with Count IV, we're
4 just taking it back to June 1st because we have to put them on notice
5 about when these times occurred, we do not have to prove in these
6 cases a specific date that the crimes occurred, and I don't see how
7 changing these dates in any way prejudices their defense, because their
8 defense is she's lying, and then possibly they might be going after mom
9 for making this up to obtain a U Visa, so the dates don't matter to their
10 defense.

11 And I would also point out that the Supreme Court has only
12 found substantial prejudice when the State has moved to amend after
13 the Defense has presented their case where the Defendant has testified,
14 basically cutting off their knees, which that's not fair, but in this case,
15 changing or expanding the dates when these counts could have
16 occurred, conformed with her testimony and it does not prejudice them
17 in any way, and I would ask to be able to amend.

18 THE COURT: Thank you.

19 All right. I'm going to allow the amendment. I don't see how
20 there is prejudice. The State has informed in the initial indictment the
21 facts leading to the charges, the exact dates, and very often are amended
22 and since the Defense has not even -- well, the State is still in the middle,
23 if not beginning of the case. The Defendant hasn't presented a case.
24 There certainly is no prejudice since they were on notice of all the facts
25 of the alleged crime, including the time range, when it occurred.

1 All right. What else?

2 MS. DIGIACOMO: And, Your Honor, I would just ask, did you
3 want me to move to make these amendments in front of the jury?

4 THE COURT: I don't see -- I don't think it's --

5 MS. DIGIACOMO: I don't know if it's necessary, it's just --

6 THE COURT: -- ever done.

7 MS. DIGIACOMO: -- expanding dates.

8 THE COURT: No, I -- no, I don't see it. I haven't, even in, you
9 know, I haven't had it done, and I've done enough of these that even
10 especially sexual assaults, I -- it could have been done before, I don't
11 think it needs to be done in front of the jury. If you want it -- if either side
12 wants the amended read, I suppose that's appropriate, but --

13 MS. DIGIACOMO: And I'll leave that to the Defense.

14 MR. SPEED: Yeah, we could probably -- I was just about to
15 say, Your Honor, we prefer to leave things as they are. I don't see
16 how --

17 THE COURT: Okay, fine.

18 MR. SPEED: Thank you.

19 THE COURT: Okay, what's next?

20 MS. DIGIACOMO: If we could go with your objection first to
21 the prelim testimony and make a record of that?

22 MS. MACHNICH: Yes. Your Honor, we were provided with
23 the State's proposed redactions to the preliminary hearing testimony
24 and the Family Court hearing of the two transcripts that they are seeking
25 to introduce. Overall, we are objecting to the introduction of these into

1 evidence. We believe that it would be cumulative, and that even if they
2 are introduced into evidence, they should not go back with the jury,
3 similarly to --

4 THE COURT: Those are two different arguments, and they
5 are --

6 MS. MACHNICH: Right.

7 THE COURT: -- distinct.

8 MS. MACHNICH: They are, Your Honor. We don't think they
9 should be introduced into evidence, we believe that they would be
10 cumulative. We don't believe that it is necessary for the State to bolster
11 the witness testimony at this point. This witness was on the stand for
12 several -- many hours between direct and cross. Her live testimony is
13 what the jury should base their decision upon. So overall, we would
14 object to these being introduced into evidence whatsoever.

15 A step further than that, we believe that if Your Honor is
16 inclined to introduce them into evidence in this case, we would object to
17 them going back to the jury room to be dissected and gone over line by
18 line by the jury. We believe that that would be, again, cumulative to
19 what's been heard.

20 And also, pursuant to NRS 175.441, we would liken this to
21 depositions, going back, Subsection 1. We would liken this to copies of
22 deposition transcripts in that they should not be able to base their verdict
23 on --

24 THE COURT: Well, let's -- so are you asking that it go back
25 to the jury, State?

1 MS. DIGIACOMO: Yes.

2 THE COURT: All right.

3 MS. DIGIACOMO: I am moving to admit it pursuant to 51.

4 THE COURT: I'm sorry, just want to -- I thought maybe that
5 wasn't your intention. Go ahead.

6 MS. DIGIACOMO: But just for the record, so it's clear, it
7 would be the transcript of the preliminary hearing that we would be
8 asking to admit, because that's the official record, and then redacted
9 video from the CPS hearing, because that's the official record.

10 THE COURT: Go ahead, Defense.

11 MS. MACHNICH: Okay.

12 THE COURT: Sorry, I just thought maybe I could shorten
13 this, but go on.

14 MS. MACHNICH: Okay. Well, Your Honor, with regard to
15 what goes back, first of all, this is the first time that we've, I guess, fully
16 heard or understood that the State intended to introduce a video of the
17 Family Court hearing.

18 While we have had a chance to review the transcript, we
19 have not had a chance to review the redacted video that the State is now
20 proposing. We don't think that that would be appropriate whatsoever,
21 but we would liken that video, I guess, in this instance, the Family Court
22 hearing video, and as well as the preliminary hearing transcript,
23 pursuant to NRS 175.4412 depositions, in that they should not be -- they
24 would not be properly brought back before the jury. It would put too
25 much focus on, and bolster that witness's testimony, in that now there

1 are three different versions that they would have before them to review
2 both in their mind, and the two that are live, it could also put an unfair
3 emphasis on the two that would be back before the jury, as opposed to
4 the live testimony that we saw in court. We believe that that would be
5 improper, and again, liken it to the NRS that I have already put into the
6 record. In civil cases, when deposition transcripts are often prevented
7 from going back before the jury in order to avoid --

8 THE COURT: We have the Federal Rules, which we tend to
9 follow.

10 MS. MACHNICH: Correct.

11 THE COURT: Okay, thank you.

12 MS. MACHNICH: And additionally, Your Honor, if that is so
13 inclined, if Your Honor is so inclined to let them have these in the jury
14 room, we would say that --

15 THE COURT: Denied.

16 MS. MACHNICH: Okay.

17 THE COURT: State?

18 MS. DIGIACOMO: Well, Your Honor, under the NRS 51.035,
19 these statements are not hearsay, and they are allowed under
20 Subsection 2(d), a transcript of testimony given under oath, or at trial, or
21 at hearing, or before a Grand Jury.

22 They brought in the Family Court, one, and they want to pick
23 and choose what's allowed to come in and then say it's cumulative, but
24 it's not. And I would submit, too, a lot of, both in these transcripts, Your
25 Honor, could be offered for prior inconsistent statements as well.

1 At prelim and in the Family Court hearing, she testified that
2 the incident with the penetration happened in June, and that the one that
3 precipitated her calling her mom was the kiss, and then she reversed
4 those during trial. And so there's nothing that says that these should
5 be excluded pursuant to the hearsay rules. And they -- the only
6 requirement is they have to have an opportunity to be able to cross-
7 exam based on the statements, and they got that. In fact, they're the
8 ones that gave us the Family Court.

9 And so I would submit that in a case like this, where they're
10 calling her a liar, it also shows her consistency regarding the three
11 separate incidents. And under our statute and our rules, it is allowed.

12 This isn't a deposition, this is a -- it's testimony live in court,
13 where the other side had an opportunity to cross-examine. This is
14 allowed under our rules, allowed in the criminal arena, and what the
15 State's asking for is not improper. They have made it very relevant and
16 so the jury should be able to see what she said previously and use that in
17 their deliberations.

18 THE COURT: All right. Thank you. I certainly agree both the
19 State and the Federal Rules, as I said, we're following -- we're becoming
20 a Federal Rules, not that we weren't before, but even more so lately. The
21 Supreme Court has said that, and now, even the Civil Rules are more
22 conforming, more conforming to the Federal Rules.

23 In any event, the prior consistent statements are allowed in
24 both our State Rules, etcetera. If impeachment is done against a
25 witness, whether it's by use of a transcript, etcetera, sworn testimony

1 under oath where the opposing side has been able to question, etcetera,
2 certainly consistent statements are allowed to rehabilitate. And so I'm
3 going to allow the State to bring in consistent statements to rehabilitate.

4 However, I disagree, or maybe in this, depending on which
5 side, it is not allowed to the transcript to go back to the jury deliberation,
6 very much the same as the Defense brought up with a deposition. I
7 found no authority, and specifically, in the Federal Rules, they do not
8 allow the transcript to go back. You can read it, you can talk about the
9 consistent statements, but it doesn't go back.

10 Now, we have a little bit of a problem because they brought
11 in the Family Court, and I think it's, as I said previously, CPS, it's not
12 quite a normal Family Court proceeding, it's a proceeding having to do
13 with the domestic violence, at least that's my understanding.

14 MS. DIGIACOMO: It was both, Your Honor.

15 THE COURT: Yeah. In any event, and I checked the
16 recording, if you will, JAVS is the formal -- is the formal transcript, and
17 know if a party is requesting a written, then it has to be done through the
18 court process to be certified. That was not done, so we will have to use
19 the actual, and I assume it will have to be edited since there may be
20 other stuff in there, I don't know, but certainly, the prior consistent
21 statements through the video recording can be shown to the jury. Again,
22 they don't go back with the whatever for them to play in the deliberation
23 room.

24 I don't know what's -- how you're going to do that as far as
25 the actual video recording, but -- and I don't know what's on it, since

1 nobody's provided it, but that's my decision.

2 MS. DIGIACOMO: All right, Your Honor. And just so I can
3 clarify, we can play the portion that deal with the sex case. We had
4 edited out the domestic violence or anything with that. We can play that
5 in front of the jury, and we can read the preliminary hearing.

6 THE COURT: The part where she says what happened --

7 MS. DIGIACOMO: Yes.

8 THE COURT: -- and to be prior consistent statements that
9 rebut the prior inconsistent -- rebut the impeachment, if you will, yes,
10 that's -- you can play that.

11 MS. MACHNICH: And, Your Honor, we would request that
12 before anything be played, we be given a chance to review the edited
13 video, just to make sure?

14 THE COURT: Absolutely.

15 MS. MACHNICH: Thank you.

16 MS. SUDANO: Your Honor, we do have a version of the
17 edited video that we were able to provide last night after we received the
18 video for the first time, you know, yesterday afternoon. So we can
19 provide that now. We gave them the transcript yesterday.

20 MS. DIGIACOMO: Which shows what we were planning to
21 put in and what was redacted. So they didn't get to see it, but they --

22 THE COURT: Well, now they can go over it. How long was
23 the testimony?

24 MS. DIGIACOMO: Well, her testimony in its entirety, I can't
25 remember, maybe an hour, but there's -- it's about 24 minutes and 30

1 seconds that we've condensed down to only talking about
2 what --

3 THE COURT: All right. You've given them the written
4 version --

5 MS. DIGIACOMO: Yes.

6 THE COURT: -- that you were provided by the Defense?

7 MS. DIGIACOMO: Yes, we did that last night on the record.

8 THE COURT: Okay. Again, just so it's clear, that isn't a valid
9 transcript. A valid transcript even from Family Court would be a request
10 to Family Court to have it transcribed, but as I said, the actual video is all
11 they use 99 percent of the time.

12 All right. Anything --

13 MR. SPEED: Your Honor -- oh, I'm sorry, Your Honor, if I
14 may?

15 THE COURT: Go ahead.

16 MR. SPEED: I do have a copy and the Court was perusing it
17 yesterday. I have a copy of the complete transcript of the complete
18 video that was provided to us from the Family Court. I believe Your
19 Honor asked that a copy of the complete transcript be submitted to the
20 Court and added to the file as a Court's exhibit. I have one of those for
21 Your Honor now. I'm not sure if the Court kept its copy yesterday or not.

22 THE COURT: That's fine.

23 MS. DIGIACOMO: Your Honor, we would also ask --

24 THE COURT: I was never provided a copy.

25 MS. DIGIACOMO: We would also ask that the ex parte order

1 also be marked. We don't have a copy of that, and so we would also ask
2 that that be marked as a Court's exhibit as well.

3 THE COURT: Ex parte order of what?

4 MS. DIGIACOMO: How he got that video.

5 THE COURT: Oh.

6 MS. DIGIACOMO: Because the normal process --

7 THE COURT: Fine, yes.

8 MS. SUDANO: Can I --

9 THE COURT: Yes.

10 MS. SUDANO: I apologize, Your Honor. So there was one
11 change that the Public Defenders were requesting on the Family Court
12 transcript, and so if that is going to be removed from the video, we need
13 to get our staff working on that so that we can play it. So would Your
14 Honor be --

15 THE COURT: Are you agreeing to it or do you want to argue
16 that also?

17 MS. SUDANO: We want to argue that also, Your Honor.

18 THE COURT: Okay. What is the statement?

19 MS. SUDANO: The statement is on Page 47 of the transcript.
20 So if and when Your Honor gets one, in just a second --

21 MS. MACHNICH: And, Your Honor, we'll make this easy.
22 We'll withdraw our objection to that. We're not --

23 THE COURT: Okay. I hear you.

24 MS. MACHNICH: We're not -- obviously, we're not
25 withdrawing our objection to this overall going back --

1 THE COURT: Yes.

2 MS. MACHNICH: -- or anything else, but we will withdraw
3 that one.

4 THE COURT: To that one?

5 MS. MACHNICH: Yeah.

6 THE COURT: The statement, whatever it is.

7 MS. MACHNICH: Correct.

8 THE COURT: Anything else?

9 MR. SPEED: And with respect --

10 THE COURT: I'll give you some time.

11 MR. SPEED: With respect to the ex parte order, Your Honor,
12 a copy of that was filed.

13 THE COURT: Okay.

14 MR. SPEED: So there is a file stamped copy of Judge
15 Teuton's order in Odyssey.

16 THE COURT: In this court or in Family Court?

17 MS. DIGIACOMO: Well, and Your Honor, when I went
18 through Odyssey before, we're locked out now.

19 THE COURT: Counsel, in this court or in the Family Court?

20 MR. SPEED: I'm not -- is it Family Court?

21 MS. MACHNICH: It's all the same.

22 MR. SPEED: I believe it's Family Court, Your Honor.

23 THE COURT: All right. It needs to be copy of Court's exhibit
24 in this court.

25 MR. SPEED: Certainly.

1 THE COURT: So it's part of the record on appeal.

2 Did you have something else?

3 MS. DIGIACOMO: No, Your Honor, that's what I was going
4 to say. When I looked into Odyssey in this case, I never saw such an
5 order.

6 THE COURT: Okay.

7 [Recess taken from 9:01 a.m. to 9:07 a.m.]

8 [Outside the presence of the jury]

9 THE COURT: Are we ready to go?

10 MS. DIGIACOMO: Yes, Your Honor. And just for the -- if we
11 could go back on the record just for a minute?

12 THE COURT: You're not ready to go. Okay, go ahead.

13 MS. DIGIACOMO: Just for clean-up that we've talked since
14 you've been off.

15 THE COURT: Go.

16 MS. DIGIACOMO: Okay. Are we back on?

17 Your Honor, with regard to the preliminary hearing transcript
18 that you said that we could read into the record, both sides did get
19 together and we've agreed on the redactions. And then what we
20 propose is marking this as a Court's exhibit, not a State's exhibit, so it
21 doesn't accidentally go back, if that's fine with the Court?

22 THE COURT: That's fine.

23 MS. DIGIACOMO: Okay.

24 THE COURT: That's what all of these are going to be Court's
25 exhibits, so they don't back. So far, I don't think we have -- oh, we have

1 like a picture and that's it.

2 MS. DIGIACOMO: Yeah.

3 THE COURT: All we have is some pictures.

4 MS. DIGIACOMO: And some disks, we have the bodycam.

5 THE COURT: Okay, yeah.

6 MS. DIGIACOMO: That are State's exhibits.

7 THE COURT: All right.

8 [Counsel confer]

9 THE COURT: Do you need a copy of that?

10 MR. SPEED: No, Your Honor, I have several.

11 MS. DIGIACOMO: Is that the transcript cover?

12 MR. SPEED: Yes.

13 MS. DIGIACOMO: All right.

14 THE COURT: Are you ready to lead?

15 MR. SPEED: No, not yet. I have misappropriating

16 equipment.

17 THE CLERK: I was going to say, where is my --

18 MR. SPEED: Misappropriating equipment.

19 MS. DIGIACOMO: I was going to say where is my -- okay.

20 MR. SPEED: We are ready, Your Honor, let's go.

21 THE COURT: Bring them in.

22 MS. DIGIACOMO: Did you just tell the Court let's go?

23 THE COURT: Yeah, it's okay, I agree with him, let's go.

24 MR. SPEED: Respectfully.

25 THE COURT: I agree with him, yes, let's get this thing done.

1 We -- because we have most of -- all of today, closer to --

2 MS. DIGIACOMO: I think we're back on track, Your Honor.

3 THE COURT: Closer to getting it done on Friday?

4 MS. DIGIACOMO: Yes. Because depending where they go
5 with mom, we may be able to cut out witnesses, so.

6 THE COURT: Thursday, tomorrow, what --

7 MS. DIGIACOMO: I think it was 9:30.

8 [Judge and Clerk confer]

9 THE COURT: Who's the first witness?

10 MS. DIGIACOMO: Jose Moran.

11 THE MARSHAL: Please rise for the jury.

12 [Jury in at 9:10 a.m.]

13 [Inside the presence of the jury]

14 THE COURT: Thank you. Please be seated.

15 Good morning, ladies and gentlemen.

16 JURORS: Good morning, Your Honor.

17 THE COURT: So, I am trying to, again, cancel my morning
18 calendar tomorrow, so we can still have the [indiscernible] done. I think
19 we will, and so we will either be starting at 9:00. Well, I will tell you
20 certainly before then, but I'm hopeful to start at 9:00, maybe even a little
21 before that, that's where we're at.

22 Parties acknowledge presence of the jury?

23 MS. DIGIACOMO: Yes, Your Honor.

24 MR. SPEED: Yes, Your Honor

25 THE COURT: State, call your next witness.

1 MS. DIGIACOMO: Thank you. The State calls Jose Moran.

2 THE COURT: So everybody knows, I have the all Judges
3 meeting at noon, so -- which I have to go to.

4 MS. DIGIACOMO: So we'll be breaking at noon, Your Honor?

5 THE COURT: Yes.

6 MS. DIGIACOMO: And then coming back at 3:00?

7 THE COURT: Oh, okay. So that's -- counsel approach.

8 [Sidebar at 9:12 a.m.]

9 THE COURT: So today is the day you have from 1:00 to 3:00?

10 MS. DIGIACOMO: No, my argument is from 2:00 to 2:30, but
11 because it's not in this building, I need to walk -- be walking over there
12 by 1:30, and then by the time I get back here it would be like 2:45-ish, as
13 long as they're on time with their arguments. I'm the second one, so
14 I'm -- or third one, so I'm hopeful they are. So that's why I would need a
15 break from like 1:00 to 2:00 to 3:00 to be able to get there and back.

16 THE COURT: You will be back by 3:00.

17 MS. DIGIACOMO: And also, Your Honor, because of -- they
18 need to watch the video. One of our witnesses we had to call off for this
19 morning, so we might not have enough witnesses for this morning now
20 anyway, the one that we were going to play the video with, so. And then
21 we do have a witness coming at 3:00.

22 MS. SUDANO: But we can also reschedule her if we don't
23 want to just have a three hour break.

24 MS. DIGIACOMO: Yeah, but as of right now, we're
25 down --

1 THE COURT: I'll give you 3:00 to 5:00 or 5:30.

2 MS. DIGIACOMO: I'm just saying right now we're down to
3 four witnesses this morning, that's it.

4 MS. SUDANO: Uh-huh.

5 MS. DIGIACOMO: But that's mom and brother, so they
6 might have lengthy cross with them. We have one for this afternoon,
7 and then tomorrow, we'll have one or three, depending on if they go into
8 the evening, and then --

9 MS. SUDANO: We'll have two tomorrow

10 MS. DIGIACOMO: Three because the one we're moving from
11 today to tomorrow --

12 MS. SUDANO: Yeah.

13 MS. DIGIACOMO: -- we'll play the video. So there will
14 be -- who's the other one? We'll just have that one or three --

15 THE COURT: You guys can talk about that.

16 MS. DIGIACOMO: Yeah.

17 THE COURT: I just wanted -- today I forgot [indiscernible].

18 MS. DIGIACOMO: Yeah.

19 THE COURT: It's not on my calendar, that's why. Okay.

20 Thank you.

21 MS. DIGIACOMO: Thank you, Your Honor.

22 [Sidebar ends at 9:14 a.m.]

23 THE COURT: Go ahead and swear the witness.

24 COURT OFFICER: Raise your right hand.

25 JOSE MORAN, PLAINTIFF'S WITNESS, SWORN

1 [Witness testifies by and through an Interpreter]

2 COURT OFFICER: Please be seated and state and spell your
3 name for the record.

4 THE WITNESS: Jose Juan Moran. J-O-S-E, J-U-A-N,
5 M-O-R-A-N.

6 THE COURT: Be seated.

7 MS. DIGIACOMO: Thank you, Your Honor.

8 THE COURT: But before you get started, so the jury
9 understands, I forgot, but in the afternoon today you're going to get a
10 long lunch is what it means. And I'm going to check the agenda of the
11 judges meeting, et cetera, and pending witnesses. You're going to get a
12 long lunch, but we're going to have you back here at 3, so we hopefully
13 stay on schedule and we'll have a witness or two.

14 Okay, counsel, go ahead, proceed.

15 MS. DIGIACOMO: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. DIGIACOMO:

18 Q Jose, what is your primary language?

19 A Spanish.

20 Q And what language do you speak in the home?

21 A Spanish.

22 Q And has it been that your whole life?

23 A Yes.

24 Q Do you speak English, as well?

25 A Yes.

1 Q Do you feel more comfortable testifying in English or
2 Spanish?

3 A Spanish.

4 Q Okay. Now, what is your birth date, Jose?

5 A January 5th of 2004.

6 Q And how old are you now?

7 A Fifteen.

8 Q Back in the summer of 2016, how old were you?

9 A Sixteen, I think -- no.

10 Q So three years ago, how old were you?

11 A Twelve.

12 Q Okay. In 2015, the school year that began that summer and
13 went to 2016, up until when the police were called in this case, what
14 grade were you in?

15 A I don't remember.

16 Q Okay. And do you have any sisters?

17 A Yes.

18 Q How many sisters?

19 A One.

20 Q And what is her name?

21 A Meily Moran.

22 Q Is she older or younger than you?

23 A Older.

24 Q Do you know how many years older?

25 A One.

1 Q Okay. Are you one year behind her in school or two years
2 behind her in school?

3 A After, one year.

4 Q Okay. So what grade are you going into next year?

5 A Ten.

6 Q And what grade will your sister, Meily, be going into?

7 A Twelve.

8 Q Okay. So is she two grades ahead of you?

9 A Yes.

10 Q Okay. Now, do you know -- well, let me go back. Between
11 2014 and 2016, who did you live with?

12 A My mother, my sister, I think it was a small brother, and my
13 stepfather.

14 Q Okay. Now, the person that you're calling your stepfather,
15 what's his name?

16 A Gustavo Adonay Gunera.

17 Q Do you see your stepfather, Gustavo, in the courtroom here
18 today?

19 A Yes.

20 Q Would you point to the person you're referring to and
21 describe what he's wearing so that the jury and the Judge know who
22 you're talking about.

23 A He has a white shirt, a blue tie, and black pants.

24 MS. DIGIACOMO: Your Honor, would the record reflect
25 identification of the Defendant?

1 THE COURT: It will so reflect.

2 MS. DIGIACOMO: Thank you.

3 BY MS. DIGIACOMO:

4 Q Now, you told us you have one sister. Do you have any
5 other brothers?

6 A Yes, two.

7 Q Okay. And how old are your brothers?

8 A Four and three.

9 Q That's how old they are today?

10 A Yes.

11 Q Okay. And do you know who the father of those kids are?

12 A Yes.

13 Q And who is that?

14 A Gustavo.

15 Q Okay. Your stepdad?

16 A Yes.

17 Q And then who is -- sorry. And then who is the mother?

18 A My mother.

19 Q And what is your mother's name, just for the record?

20 A Meili Casillas Ortiz.

21 Q Okay. Now, was your mom and your stepdad actually
22 married?

23 A No.

24 Q Okay. But you did refer to Gustavo as your stepdad?

25 A Yes.

1 Q Did you like Gustavo at first or did you like him at all?

2 A Yes.

3 Q Okay. At some point did something happen that changed
4 whether or not you liked him?

5 A Only at the end.

6 Q Okay. At some point did Meily confide in you something that
7 had been going on with Gustavo?

8 A Yes.

9 Q Okay. When she told you this, do you remember where you
10 were the first time?

11 MR. SPEED: Objection, Your Honor, leading.

12 MS. DIGIACOMO: I asked where he was.

13 MR. SPEED: Where he was the first time.

14 THE COURT: Overruled.

15 THE WITNESS: In a mobile home.

16 BY MS. DIGIACOMO:

17 Q Okay. Now, how many mobile homes did you live at?

18 A Two.

19 Q And did you live somewhere in between the two mobile
20 homes?

21 A I don't remember.

22 Q Okay. Do you remember if she told you when you lived in
23 the first mobile home or the second mobile home?

24 A In the first one.

25 Q In the first one. All right. When she told you about Gustavo,

1 did you want to tell anyone else?

2 A In the beginning, my mother.

3 Q And did you tell your mother?

4 A No.

5 Q Why not?

6 A Because my sister asked me not to tell her.

7 Q Okay. Did you just have the one conversation with your
8 sister about what Gustavo was doing or were there more than one?

9 A There were more.

10 Q Did she ever tell you specifically what about Gustavo upset
11 her?

12 A I don't understand.

13 Q Okay. That was a bad question. When she talked to you
14 about her feelings or about Gustavo or what he was doing, did she tell
15 you specifics what he was doing or said?

16 A No.

17 Q Okay. When she talked to you, though, how did you feel
18 about what she told you?

19 A I don't remember.

20 Q Okay. Were you concerned at all?

21 A Yes.

22 Q Okay. And why were you concerned?

23 A Because that's my sister and I worry about what happens to
24 her.

25 Q Okay. Were you worried that something could happen to her

1 after she told you?

2 A Yes.

3 Q Okay. What did she tell you that caused you that worry?

4 A Can you repeat it?

5 Q Sure. You said you were worried that something could
6 happen to your sister. What did she say to you that caused you to have
7 that worry?

8 A That possibly he could do something bad to her.

9 Q Okay. Did you know what that something bad was; did she
10 tell you that?

11 A No, but I was already like predicted.

12 Q You had already predicted what it could be?

13 A Yes.

14 Q And how could you predict what it could be?

15 MR. SPEED: Objection, Your Honor. That calls for
16 speculation.

17 MS. DIGIACOMO: I'm asking him how he --

18 THE COURT: Overruled.

19 BY MS. DIGIACOMO:

20 Q You can answer.

21 A Can you repeat it?

22 Q Sure. You said that you predicted what could happen. I'm
23 asking you what information did you have that caused you to predict?

24 MR. SPEED: Objection, Your Honor. Hearsay. Information
25 from whom?

1 THE COURT: Well, it's not asking for hearsay. Overruled.

2 THE WITNESS: Okay. Because what my sister told me what
3 have been happening at that time, I could predict what he could do to
4 her.

5 Q Okay. So what did she tell you had been happening?

6 A That Gustavo had been calling her to the bedroom.

7 Q Okay. So did you -- so based upon that, you were afraid
8 something more would happen with her in the bedroom?

9 MR. SPEED: Objection, Your Honor. Leading.

10 THE COURT: Sustained. Rephrase it.

11 MS. DIGIACOMO: Thank you, Your Honor.

12 THE WITNESS: Yes.

13 MR. SPEED: Object.

14 BY MS. DIGIACOMO:

15 Q Okay.

16 MR. SPEED: Your Honor, we'd ask that the Court strike the
17 witness' last answer.

18 THE COURT: I only heard a translation.

19 MS. DIGIACOMO: He said yes, Your Honor, so if you want to
20 strike that.

21 THE COURT: All right. It will be stricken.

22 MS. DIGIACOMO: Thank you.

23 MR. SPEED: And instruct the jury to disregard it, Your
24 Honor.

25 THE COURT: The jury's instructed to disregard the last

1 answer that I --

2 MS. DIGIACOMO: Okay.

3 BY MS. DIGIACOMO:

4 Q Okay. When Meily told you that she was being called to the
5 bedroom, did she tell you it happened more than one time or just one
6 time?

7 A I don't remember.

8 Q Okay. But based upon what she told you, you were afraid
9 something more could happen?

10 MR. SPEED: Objection, Your Honor. Asked and answered
11 and leading.

12 MS. DIGIACOMO: I'm just trying to clarify.

13 THE COURT: Overruled.

14 MS. DIGIACOMO: Thank you.

15 THE WITNESS: Yes.

16 BY MS. DIGIACOMO:

17 Q Do you remember when Meily told you -- well, let me ask
18 you this. Did you and Meily have more than one conversation about
19 what she was afraid Gustavo would do?

20 MR. SPEED: Objection, Your Honor. Asked and answered.

21 THE COURT: Overruled.

22 THE WITNESS: I think so.

23 BY MS. DIGIACOMO:

24 Q The first time she told you about what she told you about
25 Gustavo, do you remember what her demeanor was like, like how she

1 was acting?

2 A I don't remember.

3 Q After she had told you about what Gustavo may do, did you
4 change how you were in the house around your sister?

5 A Yes.

6 Q And how did you change your behavior?

7 A I try not to leave her by herself for a long time.

8 Q Okay. And when -- was that only when your mom was home
9 or when your mom was gone?

10 A When she wasn't there.

11 Q Okay. Now, do you recall speaking to a lady about what
12 happened back in July of 2016?

13 A No.

14 Q Okay. Do you remember talking to anybody about what had
15 been happening after the police were called in 2016?

16 A Yes.

17 Q Okay. Who do you remember speaking to?

18 A I think it was a woman.

19 Q Okay. Do you remember where you talked to this woman?

20 A No.

21 Q Do you remember if like you talked to the woman inside a
22 room or was it outside or was it at your house?

23 A In a room.

24 Q Okay. Do you remember if the conversation you had with
25 the woman was recorded?

1 A Yes.

2 Q It was recorded or you --

3 A Yes.

4 Q Do you remember telling the lady that when Meily had talked
5 to you, she was crying?

6 A Yes.

7 Q Okay. So when Meily talked to you, did she cry about what
8 she was telling you about Gustavo?

9 A Yes.

10 Q Was there ever a time that Meily was home and you called
11 her to let her know where Gustavo was?

12 A Yes.

13 Q Do you remember when that was?

14 A No.

15 Q Was it -- well, let me ask. It was after she had told you
16 something had been going on with Gustavo?

17 MR. SPEED: Objection, Your Honor. Leading.

18 MS. DIGIACOMO: Sure, I'll rephrase.

19 THE COURT: Sustained.

20 MS. DIGIACOMO: I'll rephrase.

21 BY MS. DIGIACOMO:

22 Q Was it after -- did the time that you called and warned her,
23 was it after she had told you what was going on with Gustavo?

24 INTERPRETER: I'm sorry, Interpreter wants to know the
25 first --

1 BY MS. DIGIACOMO:

2 Q Okay. Was the time that you called and warned Meily, was it
3 after she had told you what had been going on with Gustavo?

4 A Yes.

5 Q All right. So it was after?

6 A Yes.

7 Q And so it was during the time when you were trying not to
8 leave her alone?

9 MR. SPEED: Objection, Your Honor. Leading.

10 THE COURT: Sustained.

11 BY MS. DIGIACOMO:

12 Q Was it during the time you were trying not to leave Meily
13 alone?

14 A Yes.

15 Q Did Meily tell you what she was afraid Gustavo was going to
16 do?

17 A No.

18 Q Okay. When you talked to the lady, do you remember telling
19 her what Meily was afraid -- or excuse me -- do you remember telling
20 her what Meily told you about what she was afraid of?

21 A Yes.

22 Q Okay. What do you remember telling the lady?

23 A I told her that he was going to rape her.

24 Q Okay. Now, at the time did you understand what that meant?

25 A Not at all, not completely.

1 Q Okay. What did you understand it to mean?

2 A To hurt another person.

3 Q Okay. Do you remember talking to the lady about a specific
4 incident that Meily had told you about between her and Gustavo?

5 A I think so.

6 Q Okay. What did you tell the lady that Meily had told her --
7 Meily had told you?

8 A That my sister had been raped.

9 Q Okay. Let me go back. Let me ask you, do you remember
10 telling the lady that Meily had told you that Gustavo made her go into a
11 room and take off her clothes?

12 MR. SPEED: Objection, Your Honor. Leading.

13 THE COURT: Sustained.

14 MS. DIGIACOMO: Well, Your Honor, I'm trying to use this to
15 impeach.

16 MR. SPEED: The question is leading. This is --

17 MS. DIGIACOMO: I have to confront him.

18 MR. SPEED: I'm sorry, the question is leading, and this is
19 direct examination.

20 THE COURT: Approach.

21 [Sidebar begins at 9:37 a.m.]

22 THE COURT: The question is leading. You're trying to
23 impeach your own witness?

24 MS. DIGIACOMO: Sure.

25 THE COURT: Or are you trying to refresh his memory?

1 MS. DIGIACOMO: I can -- well, I'm trying to refresh his
2 memory first, but then yes, if he can't remember what he told the lady, I
3 intend to call the forensic interviewer and get out what he told her
4 because it would be a prior inconsistent statement.

5 MR. SPEED: That's fine, but she can't lead on direct
6 examination.

7 MS. DIGIACOMO: That's fine.

8 THE COURT: Exactly.

9 MS. DIGIACOMO: That's fine.

10 THE COURT: All right.

11 [Sidebar ends at 9:37 a.m.]

12 THE COURT: I'm sustaining the objection.

13 MS. DIGIACOMO: Thank you, Your Honor.

14 BY MS. DIGIACOMO:

15 Q Okay, Jose. We talked -- we were talking about what you
16 told the lady that Meily had told you; do you remember that?

17 A Yes.

18 Q If I was to show you a transcript of that conversation, would
19 that help refresh your -- excuse me -- recollection as to what specifics
20 Meily had told you Gustavo had done?

21 A Yes.

22 Q Okay.

23 MS. DIGIACOMO: Page 12 and 13, counsel.

24 May I approach, Your Honor?

25 THE COURT: Yes.

1 MS. DIGIACOMO: Thank you.

2 BY MS. DIGIACOMO:

3 Q Okay, Jose. I'm going to ask you to read --

4 MS. DIGIACOMO: Can you hear me?

5 THE COURT: Judy?

6 MS. DIGIACOMO: Can you hear me?

7 COURT RECORDER: [Indiscernible].

8 MS. DIGIACOMO: Okay.

9 BY MS. DIGIACOMO:

10 Q Okay, Jose, I'm going to ask you to read this page first and
11 then let me know when you're done reading it, okay?

12 A Yes.

13 Q And you can read it in Spanish or English.

14 [Witness reviews document]

15 Q No, no, no, I'm sorry. To yourself. Read it to yourself.

16 A I'm done.

17 Q Thank you. After reading those pages does that refresh your
18 recollection as to what you told the lady that Meily had told you
19 regarding what Gustavo had asked her to do?

20 A Yes.

21 Q Okay. So what did she tell you about a time that Gustavo
22 told her to do something?

23 A Okay. That Gustavo called my sister into the bedroom and
24 she thought it was to take care of my siblings, but in fact it was to ask her
25 to take her clothes off.

1 Q Okay. Did she tell you anything else about why Gustavo
2 wanted her to take off her clothes?

3 A No.

4 Q Okay. So I'm going to ask you again to read on page 12.

5 MS. DIGIACOMO: It'll be fourth up from the bottom, counsel.

6 BY MS. DIGIACOMO:

7 Q This specific answer. And tell me if that refreshes your
8 recollection.

9 [Witness reviews document]

10 A I'm done.

11 Q Did that refresh your recollection?

12 A Yes.

13 Q Okay. So why did -- what did she tell you Gustavo wanted?

14 A To let her -- let him see her private.

15 Q What do you know private to mean?

16 INTERPRETER: Actually, he said part.

17 BY MS. DIGIACOMO:

18 Q Private part?

19 A The reproductive organ of a person.

20 Q Okay. So that would be the private part on a female?

21 A Yes.

22 Q Do you know another name for that private part?

23 A Yes.

24 Q And what is that name?

25 A Vagina, I think.

1 Q Okay. Now, the day before police were called in July of 2016,
2 do you remember where you were?

3 A I don't remember.

4 Q Okay. Do you remember if on that day you called Meily at
5 home?

6 INTERPRETER: To call Meily at home?

7 MS. DIGIACOMO: Yes. If he was away from the house and
8 called Meily at home.

9 THE WITNESS: Yes.

10 BY MS. DIGIACOMO:

11 Q Okay. And so did you call her when you were away from the
12 house and she was at home?

13 A Yes.

14 Q And why did you do that?

15 A To prevent it, to tell her that Gustavo was going to go to the
16 house.

17 Q Okay. On that date did Meily tell you what happened after
18 you got home?

19 A She said that he had raped her.

20 Q Okay. So she told you something happened with Gustavo
21 that day?

22 A Yes.

23 Q Okay. Do you know whether or not your mom was told what
24 happened that day?

25 A No.

1 Q Okay. When did you find out that your mom was told about
2 what happened?

3 A I don't remember.

4 Q When did you find out the police were called?

5 A I don't know which day, but it was when the police was
6 called and they --

7 Q Okay. So you don't remember what day it was?

8 MR. SPEED: Objection, Your Honor. Leading.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 BY MS. DIGIACOMO:

12 Q Okay. Well, let's talk about the day that the police were
13 called. Do you remember where you were that morning?

14 A I was working.

15 Q Okay. And where were you working?

16 A At a house.

17 Q And who were you working with?

18 A With Gustavo.

19 Q Okay. And what were you doing at that house for work?

20 A Laying tile.

21 Q All right. Did you normally go to work with Gustavo?

22 A No.

23 Q When you went to work this day, do you remember if it was
24 during the school year or was it during the summer or a holiday?

25 A I think it was during the summer.

1 Q Okay. At some point did you and Gustavo go back to your
2 house?

3 A Yes.

4 Q And where were you living at the time that you and Gustavo
5 went back and when the police were called?

6 A In a mobile home.

7 Q Okay. When you were driving home, were you seated in the
8 front seat or the back seat of Gustavo's car?

9 A In the front seat.

10 Q All right. What kind of a car was it?

11 A A blue truck.

12 Q When you got home, when you were driving into the mobile
13 home park, what happened?

14 A We saw the police and then Gustavo sped up the car.

15 Q All right. Now, don't tell me what Gustavo saw, so when you
16 came into the mobile home park you said you saw the police?

17 A Yes.

18 Q And I guess where were you in the mobile home park when
19 you saw the police?

20 A At the entrance.

21 Q Okay. Were you -- when you say the entrance, was it at the
22 entrance of the park or the entrance of the street you lived on?

23 A On the entrance of the street.

24 Q Entrance of the street. So when you turned onto the street
25 you lived in, you saw police?

1 A Yes.

2 Q Where were the police; tell me what you saw?

3 A They were there in front of the house.

4 Q In front of your mobile home that you lived in?

5 A Yes.

6 Q When you saw the police, you said that Gustavo sped off?

7 MR. SPEED: Objection, Your Honor. Leading and it

8 misstates his testimony.

9 MS. DIGIACOMO: I'm just trying to go back --

10 MR. SPEED: Objection, Your Honor. The question was

11 misleading, and it misstates his testimony.

12 THE COURT: I'm overruling -- overruled.

13 INTERPRETER: Overruled?

14 MS. DIGIACOMO: Yes. He can answer.

15 THE WITNESS: What was the question?

16 BY MS. DIGIACOMO:

17 Q Okay. My question was, okay, earlier you said that you saw
18 the police and then Gustavo tried to speed off I think is what you said.

19 MR. SPEED: Objection, Your Honor. It misstates his
20 testimony.

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MS. DIGIACOMO:

24 Q Okay. What do you mean by that?

25 A When I saw the police he tried to speed up the car in order to

1 leave the place.

2 MR. SPEED: Objection, Your Honor. It calls for speculation
3 as to what my client was thinking.

4 MS. DIGIACOMO: Well, he said what he tried to do, which is
5 what he observed.

6 THE COURT: I'm going to sustain it. You can ask what he
7 observed.

8 MS. DIGIACOMO: Thank you.

9 BY MS. DIGIACOMO:

10 Q All right. So when you saw the police, tell me what the car
11 Gustavo was driving did.

12 A It sped up.

13 Q Okay. Did it speed up and go down the street or did it turn
14 around?

15 A It was on the street.

16 Q Okay. Now, when you talked to the lady about the one that
17 was recorded, do you remember talking to her about what Gustavo did
18 while driving the truck?

19 A Can you repeat it?

20 Q Do you remember what you told the lady that interviewed
21 you about what Gustavo did when he was driving the car?

22 A I think so.

23 Q Okay. What did you tell her?

24 A I told her that after he sped, sped off, the police stopped us
25 and asked us to get out of the car.

1 Q Okay. Now, do you -- if I was to show you your statement,
2 would that refresh your recollection as to more specifics as to what you
3 told her?

4 A Yes.

5 Q Okay. I'm going to show you first --

6 MS. DIGIACOMO: Page 5, counsel.

7 And just the Court's indulgence one moment.

8 Actually, just page 5.

9 May I approach, Your Honor?

10 THE COURT: Yes.

11 BY MS. DIGIACOMO:

12 Q Okay. I'm going to ask you to read the second full
13 paragraph, please, Jose.

14 [Witness reviews document]

15 BY MS. DIGIACOMO:

16 Q So read that to yourself and then let me know when you're
17 done, please.

18 A I'm done.

19 Q Thank you. Does that refresh your recollection as to what the
20 car Gustavo was driving did?

21 A Yes.

22 Q Okay. What specifically did the car do?

23 MR. SPEED: Objection, Your Honor. May we approach?

24 THE COURT: Yes.

25 [Sidebar begins at 9:57 a.m.]

1 MR. SPEED: She just had the witness read the second full
2 paragraph, where he speculates that the car Gustavo was driving tried to
3 evade --

4 MS. DIGIACOMO: No, no --

5 MR. SPEED: I just -- excuse me. I just objected to that
6 previously when he tried to testify as to what my client was thinking.
7 Here he's giving the same answer to the same question, only it's in
8 written form, and the District Attorney has tried to refresh his
9 recollection as to what he speculated the car Gustavo was driving was
10 trying to do.

11 MS. DIGIACOMO: That's incorrect.

12 THE COURT: Can I read -- read it --

13 MR. SPEED: His idea --

14 THE COURT: Your finger is on it --

15 MR. SPEED: Oh, I'm sorry, Your Honor.

16 THE COURT: Thank you.

17 MS. DIGIACOMO: I'm trying to get out the fact that the car
18 turned around.

19 THE COURT: I get that.

20 MR. SPEED: That's been asked and answered.

21 MS. DIGIACOMO: No, it has not.

22 THE COURT: No. No.

23 MR. SPEED: All right.

24 THE COURT: And I loaded them and I --

25 MS. DIGIACOMO: If you let him read them, I'll go straight to

1 that.

2 MR. SPEED: Well, the car sped down the street.

3 THE COURT: Can I read this, please?

4 [Court reviews document]

5 THE COURT: The -- and he tried to evade them --

6 MR. SPEED: Right.

7 THE COURT: -- was his opinion, but then --

8 MS. DIGIACOMO: I'm not trying to --

9 MR. SPEED: But that's my concern.

10 THE COURT: And he doesn't say he made a -- he turned.

11 MS. DIGIACOMO: Yes, it does.

12 THE COURT: Ask him --

13 MS. DIGIACOMO: Can I have my -- oh, I have my --

14 THE COURT: -- the direction of the vehicle, so we can get

15 this done.

16 MS. DIGIACOMO: Your Honor, all I'm trying to get in, and

17 then he made a turn.

18 THE COURT: I get that.

19 MS. DIGIACOMO: That's it.

20 THE COURT: I get that.

21 MS. DIGIACOMO: So if you let me just get to that.

22 THE COURT: How old is he?

23 MR. SPEED: He's 13.

24 MS. DIGIACOMO: He's --

25 MR. SPEED: He's 13. He's a --

1 MS. DIGIACOMO: He's 12 at this time.
2 THE COURT: Yes, that is the problem.
3 MR. SPEED: He's 15.
4 MS. DIGIACOMO: So if I can just specifically ask that. I don't
5 want to go into --
6 THE COURT: Go ahead.
7 MS. DIGIACOMO: But he's going to object to leading. I'm
8 just saying can I --
9 THE COURT: I don't think he objected to asking what
10 direction of the vehicle.
11 MR. SPEED: Right.
12 THE COURT: He's asking his opinion.
13 MR. SPEED: Yes.
14 THE COURT: That's objectionable.
15 MS. DIGIACOMO: No. I tried --
16 THE COURT: You don't ask -- I get it. You tried, but --
17 MS. DIGIACOMO: Can I just go straight to it?
18 THE COURT: He's young.
19 MR. SPEED: You can't lead him.
20 MS. DIGIACOMO: Okay, here's the thing, Your Honor. I just
21 want to ask the fact that he turned the car around. That's it. But if -- if he
22 won't let me just ask that question, he could save the evading, which I'm
23 not trying to get at.
24 THE COURT: Well --
25 MR. SPEED: Here's the issue, Your Honor. The witness

1 doesn't remember what he doesn't remember.

2 MS. DIGIACOMO: I just --

3 MR. SPEED: And if she's trying to ask --

4 MS. DIGIACOMO: -- refreshed --

5 MR. SPEED: If she's trying --

6 MS. DIGIACOMO: I just refreshed his recollection.

7 MR. SPEED: Sorry.

8 THE COURT: It's not that he doesn't remember, it's that he's
9 very young and I think just ask him again what direction the car started --

10 MS. DIGIACOMO: Okay, thank you.

11 THE COURT: -- what the direction the car ended.

12 MS. DIGIACOMO: Okay, thank you.

13 [Sidebar ends at 9:59 a.m.]

14 BY MS. DIGIACOMO:

15 Q Okay, Jose --

16 UNKNOWN JUROR: One minute, Judge.

17 THE COURT: We're not taking questions now, we'll take --
18 well, do you need a break?

19 UNKNOWN JUROR: No, Judge.

20 THE COURT: Okay.

21 UNKNOWN JUROR: Give me a minute.

22 THE COURT: All right. We're going to take a five minute
23 recess. During this recess, you're admonished do not talk or converse
24 amongst yourselves or with anyone else on any subject connected with
25 this trial, or read, watch, or listen to any report or commentary on the

1 trial, or any person connected with this trial, by any medium of
2 information, including, without limitation newspapers, television, radio
3 or internet.

4 Do not form or express any opinion on any subject
5 connected with the trial until the case is finally submitted to you. We
6 might as well make it a bathroom break. Ten minutes.

7 THE MARSHAL: Please leave the notebooks and pens.
8 Please rise for the jury.

9 [Jury out at 10:01 a.m.]

10 [Outside the presence of the jury]

11 MS. SUDANO: Your Honor, may we have him acknowledge
12 not to speak to them.

13 THE COURT: He's going to go into the -- he's going in the
14 ante room.

15 THE CLERK: There's no one in there.

16 MS. SUDANO: There's no one in there, okay. That's fine.

17 THE COURT: So he'll be on his own. You can't talk to
18 anybody.

19 Juror number 8, who is Ms. Velasquez says can we have a
20 different translator. Translator doesn't understand questions herself and
21 changes what the witness is saying. The translator is court certified,
22 correct?

23 MS. DIGIACOMO: I know, but I have actually had this in
24 other trials where we had to switch out interpreters, because it wasn't
25 being -- it was the Judge who spoke Spanish and said it wasn't being

1 done correctly. That's a concern now.

2 THE COURT: I don't, but -- I have some problems with --

3 MR. SPEED: Just a minutes.

4 MS. DIGIACOMO: You don't have to --

5 THE COURT: I have no problem doing that, so --

6 THE MARSHAL: The next person up, Your Honor, I believe

7 Mr. Hanks has a number of interpreters available for us.

8 MS. DIGIACOMO: Or they could switch.

9 THE COURT: Yeah.

10 MS. DIGIACOMO: You could interpret for the dad and --

11 MR. SPEED: Well, I'd rather not have that now.

12 MS. DIGIACOMO: Oh, true. You're right. You're right.

13 Never mind. Not thinking.

14 THE COURT: I'm not saying -- I'm not saying that's the case.

15 MR. SPEED: Right.

16 THE COURT: And although it certainly -- we were talking
17 about something else, and nothing even in the court, and somebody was
18 telling me, well, you know, the -- and I'm sure this is certainly the
19 Supreme Court can take -- say somebody who speaks Spanish in Cuba,
20 is different than somebody who speaks Spanish in Venezuela and, you
21 know, there's dialects throughout. And I believe -- I'm actually I'm not
22 sure we even asked whether their dialect is from Mexico or somewhere
23 else.

24 So I understand that could potentially -- in any event, I'm not
25 saying that there's a problem. But we'll go ahead and have somebody

1 else. And I suppose I can remind the jury that this-- these are court-
2 certified translators.

3 Is that what you want?

4 MS. DIGIACOMO: Sure, Your Honor.

5 MR. SPEED: Yes, Your Honor, I do.

6 MS. DIGIACOMO: I think -- I think it's going to be an issue for
7 this juror now with this interpreter. And it's the same interpreter for the
8 next witness, too.

9 THE COURT: I --

10 MS. DIGIACOMO: And I -- I -- it's no slight towards the
11 interpreter. It's just now it becomes a jury problem.

12 THE COURT: Exactly. Here would you mark this? The
13 Court's exhibit.

14 THE CLERK: Yeah, sure.

15 THE COURT: All right. So we will switch the translator out.

16 MS. DIGIACOMO: Well, and Your Honor, I would also state
17 that we should probably maybe re-admonish them that -- and that may
18 be the juror's concern is that it's what the interpreter says that's in
19 evidence, not what she's hearing from the witness. Which, it sounds like
20 from the notes, she's trying to do that, but is disagreeing with the
21 interpretations.

22 MR. SPEED: I don't want to read into what a juror is thinking
23 or not thinking, or their opinion on the Spanish language. I don't speak
24 Spanish, and I'm not sure whether Ms. DiGiacomo does or not. But --

25 THE COURT: Well, that's --

1 MR. SPEED: -- what the Court suggested we do going
2 forward, I think is adequate.

3 MS. DIGIACOMO: Okay.

4 THE COURT: I will tell them that these are court-certified
5 interpreters and they're to listen to the interpreter's translate -- the
6 interpreter's translation is the official one. Is that okay?

7 MR. SPEED: That is fine, Your Honor. Thank you.

8 THE COURT: All right.

9 MS. DIGIACOMO: While we're on this break, we have a
10 couple of clips for the upcoming witness to watch, in which we had to
11 wait for another interpreter.

12 THE COURT: Go ahead.

13 MS. DIGIACOMO: Okay. Can you grab them? They're up
14 with the Clerk.

15 THE COURT: So we need to call the next interpreter.

16 THE CLERK: Your Honor, do you want me to call the office
17 and have them send someone?

18 THE COURT: Yes, yes, please.

19 [Recess taken from 10:07 a.m. to 10:18 a.m.]

20 [Outside the presence of the jury]

21 THE COURT: As far as -- is this your -- you have other
22 witnesses, right? So --

23 MS. DIGIACOMO: We have three more.

24 THE COURT: Yeah, let's -- we'll do them. If I have to -- if I
25 can't go, I can't go. I want to get it done.

1 [Recess taken from 10:19 a.m. to 10:29 a.m.]

2 [Outside the presence of the jury]

3 THE MARSHAL: Come to order. Courtroom 28 is again in
4 session.

5 THE COURT: All right. We ready to go?

6 MS. DIGIACOMO: Yes, Your Honor.

7 THE COURT: Anything we need to talk about?

8 MR. SPEED: No, sir.

9 MS. DIGIACOMO: No.

10 THE COURT: Anything we need to talk about?

11 MR. SPEED: No, sir.

12 MS. DIGIACOMO: No.

13 THE COURT: Oh, I thought you said you did.

14 MS. DIGIACOMO: No.

15 THE COURT: Okay. Bring them in.

16 [Jury in at 10:30 a.m.]

17 [Inside the presence of the Jury]

18 THE COURT: Please be seated. Okay, ladies and gentlemen,
19 so you all understand the -- the interpreters we use are court-certified
20 interpreters. That is the only translation that can be used in trial. And
21 that's why they are certified. There can be various dialects, et cetera, but
22 that's -- the translation is the official translation.

23 Okay, where were we?

24 MS. DIGIACOMO: We need Mr. Moran back on the stand.

25 THE COURT: Yeah, Mr. Moran.

1 THE COURT: You can be seated. You're still under oath. Go
2 ahead.

3 DIRECT EXAMINATION CONTINUED

4 BY MS. DIGIACOMO:

5 Q Thank you, Your Honor. and, Jose, when -- before the break,
6 I had showed you page five of your statement, and was going to ask you
7 a question about the car -- or the truck Gustavo was driving, what
8 direction it went in. When you read this, did that refresh your
9 recollection?

10 A Yes.

11 Q Okay. When turning onto the street, what direction -- well,
12 let me -- let me back up. You said you call the police and that Gustavo
13 sped. So my question is what direction did he speed?

14 A Straight.

15 Q Okay. Now when I just showed you this, do you recall telling
16 the lady that he made a turn?

17 A Yes.

18 Q Okay, so did he go straight and then turn?

19 A Yes.

20 Q Okay. So 9 when he turned, did that mean you went back the
21 way you came into the street?

22 A No.

23 Q Okay, tell me what it means.

24 A That he went straight, and then he took a curve that -- that
25 allowed him to turn down another place.

1 Q Okay, so when he went straight, and you said he sped, did
2 you go past the mobile home that you lived in, or not?

3 A Yes.

4 Q So you drove past the police?

5 A Yes.

6 Q Or the car went past the police? Okay. And then the car
7 turned on another street?

8 A Yes.

9 Q And then where did the -- the truck go that Gustavo was
10 driving?

11 A Towards the exit.

12 Q Okay. And when you say exit, is that the same place that you
13 drove in?

14 A Yes.

15 Q Gotcha. All right. Now the day that the police came, did
16 Meili tell you what was supposed to happen that day with Gustavo?

17 A I don't remember.

18 Q If I was to show you your statement again, would that refresh
19 your recollection?

20 A Yes.

21 [Witness reviews document]

22 MS. DIGIACOMO: Okay, and counsel, it's going to be the end
23 of page of 14 and the beginning of page 15. May I approach, Your
24 Honor?

25 THE COURT: All right.

1 MS. DIGIACOMO: Thank you.

2 BY MS. DIGIACOMO:

3 Q And I'm going to show you the bottom of page 14, and then
4 read to -- to right here. And then let me know when you're' done,
5 please.

6 [Witness reviews document]

7 A Okay.

8 Q Does that refresh your recollection as to whether or not Meili
9 had told you what was going to happen that day?

10 A No.

11 Q Okay, so it does not refresh your recollection?

12 A No.

13 Q Okay, did you know why the police were called that day?

14 A Yes.

15 Q Okay, why?

16 MR. SPEED: Objection, Your Honor. This is hearsay.

17 MS. DIGIACOMO: Well, let me -- let me rephrase.

18 THE COURT: Go ahead.

19 BY MS. DIGIACOMO:

20 Q Who did you learn why the police were called? Who -- who
21 told you why the police were called?

22 A I don't remember.

23 Q Okay. Who -- would it have been Meili, or would it have
24 been your mom?

25 MR. SPEED: Objection, Your Honor. Leading.

1 THE COURT: Sustained.

2 BY MS. DIGIACOMO:

3 Q Okay. When you said you don't remember who told you, but
4 do you remember talking to the lady at the interview about what you
5 were told?

6 A Yes.

7 Q But as you sit here today, you don't remember?

8 A No.

9 Q Okay. Did Meili ever tell you whether she was afraid of
10 Gustavo?

11 A Yes.

12 Q Okay, was she afraid of him?

13 A Yes.

14 Q How did you feel about Gustavo? Were you afraid?

15 MR. SPEED: Objection, Your Honor. Compound question.

16 THE COURT: Overruled.

17 THE WITNESS: I was a bit afraid of him, but I was more
18 focused on protecting her.

19 BY MS. DIGIACOMO:

20 Q Okay. Did you ever hear Gustavo threaten Meili regarding
21 the fact she didn't work?

22 A I don't understand the question.

23 Q Okay. Did you ever hear Gustavo talk to Meili about whether
24 or not she worked or shouldn't work?

25 A No.

1 Q Okay. Did Meili ever talk to you about things Gustavo may
2 have said to her about that?

3 A Yes.

4 Q Okay, what did she tell you?

5 A She told me that he had raped her the time that that
6 happened. And she also told me about the time that he called her into
7 the room to show her his parts.

8 Q Okay, but did Meili ever talk to you about Gustavo mad that
9 she didn't work?

10 A I don't know. I don't remember.

11 Q Okay. Did you ever hear Gustavo tell Meili he was going to
12 kick her out of the house?

13 A Yes.

14 Q Okay, what did Gustavo say to Meili?

15 A I don't remember.

16 Q Okay, but you do remember he told her he would kick her out
17 of the house?

18 A Yes.

19 Q Do you remember why he said he would kick her out of the
20 house?

21 A No.

22 Q When you would go to work with Gustavo, did you get paid?

23 A No.

24 Q Why did you go to work with Gustavo?

25 A Well, he was in charge at home. And since he was in charge,

1 whatever he said had to be done, had to be done.

2 Q Okay, so he -- Gustavo told you, you're going to go to work
3 with me?

4 MR. SPEED: Objection, Your Honor. Leading.

5 THE COURT: Sustained.

6 BY MS. DIGIACOMO:

7 Q Okay, did Gustavo tell you, you were going to go to work?
8 Or did you ask to go to work?

9 A He told me we're going to go to work.

10 Q Okay. After the -- you said that the -- you saw the police and
11 Gustavo went back to the way you exit the mobile home park, did the
12 police also go to that location at the beginning of the park; or the
13 entrance?

14 A Yes.

15 Q And did Gustavo stop the car?

16 A When they told him to stop, they stopped.

17 Q Okay.

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

19 THE COURT: Yes.

20 BY MS. DIGIACOMO:

21 Q Jose, I'm going to show you State's Exhibit Number 4 on --
22 on the screen, as soon as it focuses. There it goes. Do you recognize
23 who's in this picture?

24 A Yes.

25 Q Okay, and who's in this picture?

1 A Me.

2 Q And -- and was this taken the day that the police stopped
3 Gustavo's truck at the entrance to the mobile home park?

4 A I think so.

5 Q Okay.

6 MS. DIGIACOMO: Court's indulgence. I will pass the
7 witness.

8 THE COURT: Cross exam.

9 MR. SPEED: May I have the Court's indulgence for --

10 THE COURT: Yes.

11 MR. SPEED: -- just a moment, please.

12 CROSS-EXAMINATION

13 BY MR. SPEED:

14 Q Jose, can you hear me?

15 A Yes.

16 Q And you understood the last question I asked you, yes?

17 A Yes.

18 Q You testified earlier that you are 15 years old today, yes?

19 A Yes.

20 Q And you attend school here in Las Vegas?

21 A This year was my last.

22 Q But you did attend school here in Las Vegas?

23 A Yes.

24 Q Back in 2015-2016, you attended school here in Las Vegas;
25 isn't that right?

1 A Yes.

2 Q Okay. And you remember also talking to the lady about
3 what you said Meili told you about what had been going on between her
4 and Gustavo, yes?

5 A Yes.

6 Q And when I say Gustavo, I'm talking about the person you
7 identified earlier as your stepfather. That's clear to you?

8 A Yes.

9 Q Because you also have a baby brother named Gustavo, don't
10 you?

11 A Yes.

12 Q Now, when you talk about these things that you say Meili
13 told you that Gustavo, your stepfather did to her, you never saw any of
14 these things personally, did you?

15 A I never saw them.

16 Q And your only recollection, or a notion about anything that
17 happened between Meili and your stepfather, you obtained because
18 Meili told you; isn't that right?

19 A Yes.

20 Q You have no independent recollection of any of these things
21 that you say Meili did, or that Gustavo did to Meili, right?

22 A Yes.

23 Q You love your big sister. Meili is older than you, yes?

24 A Yes.

25 Q You consider her your big sister?

1 A Yes.

2 Q Her English is a little bit better than yours; is that fair to say?

3 A Yes.

4 Q You look up to her in many ways, don't you?

5 A Yes.

6 Q And you think it's your job as her brother -- the big brother in
7 the group of children, to protect her as best you can, don't you?

8 A Yes.

9 Q Now just a few moments ago, when this lady right here, Ms.
10 DiGiacomo was talking to you about Gustavo coming back to the mobile
11 home park, where you lived. You said that when the police told him to
12 stop, he stopped the car, right?

13 A Yes.

14 Q Okay. Now jumping forward a little bit, this is another
15 subject that you talked about with Ms. DiGiacomo. This is your
16 conversation with the lady about what Meili told you Gustavo had been
17 doing. Do you remember that conversation?

18 A Yes.

19 Q It's the same conversation that you were talking about with
20 Ms. DiGiacomo, when she was referencing a lady.

21 A Yes.

22 Q You had that conversation with the lady on the day the police
23 came to your house; isn't that right? Or to your mobile home? Isn't that
24 right?

25 A Yes.

1 Q And you remember telling that lady a long time ago Gustavo
2 had raped your sister, right?

3 A Yes.

4 Q And when you say a long time ago, you may a long time
5 before July 11th or July 12th, right?

6 A Yes.

7 Q And when you went to the place where you talked with the
8 lady, you went with Meili, yes?

9 A Yes.

10 Q And your mother, yes?

11 A Yes.

12 Q Now all of these things, so that we're clear, Jose, happened
13 in 2016, when you were in the sixth grade, yes?

14 A I think so.

15 Q And it's fair to say that you've talked about this, or these
16 things that Meili told you Gustavo did, with your mother, in that time,
17 yes?

18 A Yes.

19 Q You've talked about these things with Meili, yes?

20 A Very little, but yes.

21 Q But you have talked about these things with your sister, yes?

22 A Yes.

23 Q You talked about these things with Ms. DiGiacomo or the
24 lady sitting next to her?

25 A I think so.

1 Q Yes? You talked with different people in the District
2 Attorney's Office. Do you understand what a District Attorney is?

3 A No.

4 Q People who work with Ms. DiGiacomo.

5 A I think so.

6 Q Okay. And I'm talking about the ladies who escorted you into
7 and out of the courtroom and -- and different places in this building. Do
8 you understand that?

9 A Yes.

10 Q And you talked to the lady at the Children's Advocacy Center,
11 yes?

12 A Yes.

13 Q On the day the police came to your mobile home?

14 A Yes.

15 MR. SPEED: That is all we have, Your Honor. Thank you.

16 THE COURT: Redirect?

17 MS. DIGIACOMO: Thank you.

18 REDIRECT EXAMINATION

19 BY MS. DIGIACOMO:

20 Q Jose, you were being asked about people that you've talked
21 to within the DA's Office, and counsel was asking about the advocates
22 that brought you up to the court. Did you talk to them about your
23 testimony, or other things unrelated to the case?

24 A Other things.

25 Q Okay. And when Defense Counsel was asking you about

1 timing, as to when Meili said something happened between her and
2 Gustavo, you agreed that Meili said that he had raped her a long time
3 ago, in relation to when she told you about it.

4 A No.

5 Q Okay. No, okay, so when was it -- okay, I'm confused. So
6 when Meili first told you something happened, when was it in relation to
7 when the police came?

8 A I don't remember.

9 Q Okay. Do you remember if it was a short time or a long
10 time? Like was it the day before, was it weeks before?

11 A I think weeks.

12 Q Weeks, okay. And you used -- or it's getting translated to the
13 word raped.

14 MR. SPEED: Objection, Your Honor. Counsel is testifying.

15 MS. DIGIACOMO: Well, I'm just trying --

16 THE COURT: Approach.

17 [Sidebar begins at 11:01 a.m.]

18 THE COURT: She didn't say anything.

19 MR. SPEED: It's being translated that the word used is raped.

20 THE COURT: She hadn't even asked a question. How --

21 MR. SPEED: Right. She's testifying.

22 MS. DIGIACOMO: Well, no. My question --

23 MR. SPEED: And so I'd object.

24 THE COURT: All right. And I'm overruling it because she
25 hasn't even asked a question yet. She asked four --

1 MR. SPEED: It's being --
2 THE COURT: -- words. It's being --
3 MR. SPEED: It's being translated --
4 THE COURT: -- translated --
5 MR. SPEED: -- that --
6 THE COURT: -- and you objected.
7 MR. SPEED: -- that something was rape.
8 MS. DIGIACOMO: To the word rape.
9 THE COURT: Rape.
10 MS. DIGIACOMO: And I was going to ask him what that
11 means, because I think to us in English --
12 THE COURT: All right.
13 MR. SPEED: Oh okay.
14 MS. DIGIACOMO: -- it means something different.
15 THE COURT: All right. I'm overruling it.
16 MR. SPEED: That's fine.
17 THE COURT: All right. Thank you.
18 [Sidebar ends at 11:02 a.m.]
19 THE COURT: Overruled.
20 BY MS. DIGIACOMO:
21 Q Okay. Jose, you are saying that Meily told you that she was
22 raped by Gustavo. So I just want to clarify what you mean by that word.
23 A To harm someone else.
24 Q Okay. Thank you.
25 MS. DIGIACOMO: Nothing further.

1 THE COURT: Recross?

2 MR. SPEED: No, Your Honor. Thank you.

3 THE COURT: Questions from the jury? Raise your hand if
4 you have a question.

5 [Sidebar begins at 11:03 a.m.]

6 THE COURT: After this we have what witnesses?

7 MS. DIGIACOMO: Mom, and then two quick officers.

8 THE COURT: All right. So we're just going to go until we go.
9 So much for -- you need to mark these so we can refer to the number.

10 MS. DIGIACOMO: Your Honor, if you would rather get to the
11 meeting, we could do both officers by noon, and then bring Mom back
12 for a 3:00.

13 THE COURT: You think you'll get Mom done by -- you said
14 you have to leave by 1:30 you said?

15 MS. DIGIACOMO: We will not get done Mom.

16 MR. SPEED: Right.

17 MS. DIGIACOMO: Mom and officers probably all done
18 before I have to walk out of this courthouse at 1:30, I presume.

19 MR. SPEED: Are you walking or driving?

20 MS. DIGIACOMO: I'm walking. Yeah, I don't -- there's no
21 parking over there, that's why I've got to walk.

22 MR. SPEED: Okay.

23 THE COURT: All right. Well, let's just do as much as we can.

24 MS. DIGIACOMO: Okay.

25 THE COURT: Forget the meeting. I want to --

1 MS. DIGIACOMO: Okay.

2 THE COURT: -- hopefully get through this, whatever it takes.

3 MS. DIGIACOMO: Okay.

4 THE COURT: In less than two meetings, new admitted, and
5 the judge's meeting. But let's get it done.

6 MS. SUDANO: From what we've heard, it's not always bad
7 to miss the judges' meeting.

8 THE COURT: What's that?

9 MS. SUDANO: I said from what we've heard, it's not always
10 bad to miss the judges' meeting.

11 THE COURT: That's true. Thank you. So you each take one,
12 and then there's more.

13 [Pause]

14 THE COURT: What's the next one? What's 16? Give me 16.

15 MS. MACHNICH: 16.

16 THE COURT: That's the next one.

17 MS. MACHNICH: I think only the last one is probably.

18 MR. SPEED: Let's see.

19 THE COURT: Objections from the Defense?

20 MR. SPEED: If he knows, I don't have a problem with that.

21 THE COURT: All right. So you don't object to any of them,
22 State?

23 MR. SPEED: If he knows.

24 MS. MACHNICH: Would you guys want the first two?

25 THE COURT: This is Court's Exhibit 16.

1 MS. DIGIACOMO: We don't -- it doesn't matter to us.
2 MR. SPEED: If he knows.
3 MS. DIGIACOMO: Okay.
4 THE COURT: All right. So no objection on 16. 17?
5 MS. DIGIACOMO: Wait. And then on this one, I would say
6 two is the objectionable one because he can't speculate. Or do you want
7 to ask him?
8 MR. SPEED: That's fine. Yeah. So all of those --
9 MS. DIGIACOMO: It doesn't matter. We don't have an
10 objection.
11 MR. SPEED: -- except two.
12 THE COURT: All right. So you -- the Defense has an
13 objection to --
14 MR. SPEED: To --
15 THE COURT: -- number two?
16 MR. SPEED: -- subpart two, I guess.
17 THE COURT: Was he, Gustavo, surprised?
18 MS. DIGIACOMO: Which that's, kind of, getting into his
19 mind.
20 MR. SPEED: Yeah.
21 THE COURT: Yeah. All right. So I won't do two. And the
22 rest, there's no objection. All right. That's 17, 18. 18?
23 MS. DIGIACOMO: That's fine.
24 MR. SPEED: Yeah. That one's like the other one.
25 THE COURT: All right. 18 is fine.

1 THE COURT: 19?
2 MR. SPEED: That's a no.
3 MS. DIGIACOMO: That's not even a question for this
4 witness. That's for you.
5 THE COURT: Yes, I get it. I just have to ask. No, that's not
6 really --
7 MS. DIGIACOMO: Wait. Actually, can we see that one
8 again? Okay. Thank you.
9 THE COURT: So 19 I'm not giving. And then --
10 MR. SPEED: Is that all, sir?
11 THE COURT: -- two, what -- I'm not giving it. Two, no. And
12 then other than that, there's no objection?
13 MR. SPEED: Right.
14 THE COURT: Okay. Thank you.
15 MR. SPEED: Thank you, Judge.
16 THE COURT: Did you -- number one, did Gustavo -- does the
17 Defendant say anything?
18 MS. DIGIACOMO: Right. Say anything. Yeah, that's legit.
19 That's a statement by a party opponent. That's a legit question.
20 THE COURT: All right. Any objection?
21 MR. SPEED: It's --
22 THE COURT: I --
23 MR. SPEED: -- it's a criminal case, Judge.
24 THE COURT: Yes. Okay.
25 [Sidebar ends at 11:10 a.m.]

1 THE COURT: Is -- I can't -- again, counsel, did you -- okay.
2 Approach.

3 [Sidebar begins at 11:10 a.m.]

4 MR. SPEED: Just a moment, Your Honor.

5 THE COURT: Number one?

6 MS. DIGIACOMO: Yeah. They're not objecting.

7 MR. SPEED: If he knows.

8 MS. DIGIACOMO: If he knows.

9 THE COURT: Okay. You're sure?

10 MS. DIGIACOMO: Yeah.

11 THE COURT: No objection from the Defense as to is your
12 father -- stepfather a legal or illegal citizen? Okay.

13 [Sidebar ends at 11:11 a.m.]

14 THE COURT: Okay. So is your stepfather a legal or illegal
15 citizen?

16 THE WITNESS: I don't know.

17 THE COURT: Was your stepfather afraid of being deported if
18 he had any contact with the police when you worked with him?

19 THE WITNESS: I don't know.

20 THE COURT: Was your stepdad always afraid of having any
21 contact of any kind with the police?

22 THE WITNESS: I don't know.

23 THE COURT: Did Gustavo say anything to Jose Juan, when
24 he first saw the police?

25 THE WITNESS: I don't remember.

1 THE COURT: What did Gustavo say to you when he turned
2 around to exit back out? Or did you ask Gustavo anything like why are
3 you -- why are we turning back?

4 THE WITNESS: I don't remember.

5 THE COURT: Did Gustavo say why he was turning around?

6 THE WITNESS: I don't remember.

7 THE COURT: Follow-up from the State?

8 MS. SUDANO: None by the State.

9 THE COURT: Defense?

10 MR. SPEED: No, Your Honor.

11 THE COURT: Thank you. You may step down. State, call
12 your next witness.

13 MS. SUDANO: Thank you, Your Honor. State calls Meili
14 Casillas Ortiz.

15 MEILE CASILLAS ORTIZ, STATE'S WITNESS, SWORN

16 [Witness testifies by and through an interpreter]

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

19 THE WITNESS: Meili Casillas Ortiz. That's M-E-I-L-I.
20 Casillas is C-A-S-I-L-L-A-S, Ortiz, O-R-T-I-Z.

21 MS. SUDANO: May I proceed, Your Honor?

22 THE COURT: Yes.

23 MS. SUDANO: Thank you.

24 DIRECT EXAMINATION

25 BY MS. SUDANO:

1 Q Good afternoon. Can I call you Meile?
2 A Yes.
3 Q Meili, do you have any children?
4 A Yes.
5 Q How many?
6 A Four.
7 Q Who's your oldest child?
8 A Meily Moran.
9 Q What's her date of birth?
10 A December 5th, 2002.
11 Q So that would make her 16 currently?
12 A Yes.
13 Q Who's your next oldest?
14 A Jose Juan Moran.
15 Q What's Jose's date of birth?
16 A So January 5th, 2004.
17 Q So he's 15 right now?
18 A Yes.
19 Q Who's next after that?
20 A So Adonay Octavio Moran Casillas.
21 Q What's his date of birth?
22 A So October 2nd, '14.
23 Q So he's four?
24 A Yes.
25 Q And then who's your youngest?

1 A Gustavo Ariel Moran Casillas.

2 Q What's his date of birth?

3 A So February 22nd of '16.

4 Q So he's three now?

5 A Yes.

6 Q I noticed that your older two and your younger two have the

7 same last names as each other.

8 A Yes.

9 Q So the older two, do they have the same father?

10 A Yes.

11 Q Who was their father?

12 A Jose Juan Moran Martinez.

13 Q Is it fair to say that the two of you are no longer together?

14 A Correct.

15 Q How old were the kids when you and their father split up?

16 The older two.

17 A Jose was like seven. Meily eight.

18 Q Have they had contact with their father since that time?

19 A No, the last contact that they've has with their father is when

20 Meily was three, and Jose was two.

21 Q Okay. Now you indicated that the younger two also have

22 the same father; is that right?

23 A Yes.

24 Q Who is their father?

25 A Gustavo Adonay Gunera-Pastrana.

1 Q Do you see that individual here in the courtroom today?

2 A Yes.

3 Q Can you please point to him and tell me an article of clothing
4 that he's wearing today?

5 A He has a blue tie and a shirt. I'm not sure if it's gray or it's a
6 light-ish blue.

7 MS. SUDANO: Your Honor, would the record reflect
8 identification of the Defendant?

9 THE COURT: Yes, it is reflected.

10 BY MS. SUDANO:

11 Q Okay, fair to say that you and the Defendant dated, or were in
12 a relationship at some point?

13 A We were a couple.

14 Q When did the two of you become a couple?

15 A Like in 2013.

16 Q How is it that the two of you met?

17 A At my job. He was a customer.

18 Q What type of job?

19 A A Mexican fast food restaurant.

20 Q At any point did you and the Defendant live together?

21 A Yes.

22 Q When did you start living together?

23 A I don't remember. I think it was the same year in 2013,
24 maybe towards the end of the year.

25 Q Were the two of you ever legally married?

1 A No.

2 Q At the time that you and the Defendant started living
3 together, who else lived with you?

4 A Just Jose and Meily.

5 Q Where's the first place that you lived together?

6 A I don't remember the address.

7 Q What kind of -- was it an house, was it an apartment, was it
8 something --

9 A It was an apartment.

10 Q About how long were you in that apartment together?

11 A Like a year.

12 Q Where did you go after that first apartment?

13 A To a mobile home.

14 Q Okay. Do you remember where that mobile home was? You
15 don't have to give an address. Just cross streets.

16 A On Stewart and Pecos.

17 Q So that would be here in Las Vegas, Clark County, Nevada?

18 A Yes.

19 Q How long did you live in that mobile home?

20 A We didn't make a year there. Six or seven months.

21 Q Where did you go after that mobile home?

22 A To another apartment.

23 Q Do you remember whereabouts that apartment was?

24 A Around same area as the first one. Around Clifford -- or on
25 Clifford between Boulder Highway and Charleston, I think.

1 Q And about how long were you in that apartment?

2 A I don't remember.

3 Q Was it a long time or a short time?

4 A It was more than eight months.

5 Q Okay. Did you and the Defendant live together anywhere
6 other -- or after that second apartment?

7 A Yes.

8 Q Where was the next place that you lived?

9 A In mobile -- mobile homes park on the same Boulder
10 Highway.

11 Q Was that the last place that you and the Defendant lived
12 together?

13 A Yes.

14 Q Okay. And that last mobile home, do you remember the
15 address on that one?

16 A No.

17 Q Does 3642 Boulder Highway sound correct?

18 A Yes.

19 Q Do you remember the unit number on that one?

20 A No.

21 Q Does Unit 254 sound correct?

22 A Yes.

23 Q It's fair to say you haven't lived in that particular residence
24 since 2016?

25 A Exactly.

1 Q Okay, so that last mobile home, is that also here within Las
2 Vegas, Clark County, Nevada?

3 A Yes.

4 Q So I want to talk a little bit about the two younger kids. So
5 Adonay was born in 2014, right?

6 A Yes.

7 Q Do you remember which apartment or mobile home you
8 were living in when he was born?

9 A No.

10 Q Okay, and then Gustavo Ariel was born in 2016; is that
11 correct?

12 A Yes.

13 Q Do you remember which apartment or mobile home you
14 were living in when he was born?

15 A I think the one on Stewart and Pecos.

16 Q Was that the mobile home?

17 A Yes.

18 Q Okay, the first one?

19 A Yes.

20 Q Now I want to talk a little bit, too, about your older children.
21 So Meily is 16 now. I know we're in summer, but what grade is she
22 going to be in, in the fall?

23 A 12th grade.

24 Q Okay, and then Jose is 15 now. What grade is he going to go
25 into?

1 A Tenth.

2 Q So Meily is going to graduate from 12th grade when she's
3 17, right?

4 A Yes.

5 Q Are Meily and Jose Juan close?

6 A Yes.

7 Q Have they always been close?

8 A Yes.

9 Q Are they close with your two younger ones?

10 A Yes.

11 Q Does Meily help babysit, or take care of, her younger
12 brothers?

13 A Very much.

14 Q What about Jose Juan?

15 A Same, likewise.

16 Q So I want to talk about the time when the Defendant first
17 moved in with you and Meily, and Jose Juan. When the Defendant first
18 moved in with you, did Meily and Jose get along with him?

19 A They agreed.

20 Q And they had a good relationship initially?

21 A They started well with him.

22 Q What did your children -- older two children call the
23 Defendant?

24 A Dad, papa.

25 Q Did they always call him dad, or did something change?

1 A At first it was dad and Gustavo, and later just Gustavo.

2 Q Did you ever have a conversation with either Meily or with
3 Jose Juan, about why they stopped calling the Defendant dad?

4 A Sometime in 2016, I don't know, I did ask Meily why they
5 didn't call him dad anymore.

6 Q Did Meily give you any sort of a response back?

7 A No, just that not anymore.

8 Q Around that same time, did you notice Meily's behavior
9 change in any way?

10 A She was quiet, and she no longer had the same kind of joy as
11 before.

12 Q Did you ever ask what was going on with Meily?

13 A I asked her, but she would just say nothing, that everything
14 was okay.

15 Q Are you okay?

16 A Yeah.

17 Q Did Meily have surgery at some point on one of her ovaries?

18 A Yes.

19 Q Do you remember about when that was?

20 A I think it was in 2015.

21 Q Do you remember if it was before or after you noticed her
22 demeanor, her behavior change?

23 A Before.

24 Q Now I want to talk to you a little bit more about that surgery.
25 Did she end up with some scars on her stomach from that surgery?

1 A Yes.

2 Q Did you have to do anything with those scars?

3 A No, they're very small.

4 Q Did you ever have to check to make sure that they were
5 infected?

6 A I saw them, but she always had her appointments with the
7 doctors.

8 Q So you were letting the doctor's examine her?

9 MR. SPEED: Objection, Your Honor. Leading.

10 THE COURT: Sustained.

11 BY MS. SUDANO:

12 Q Okay, so was it yourself, or the doctors that were doing the
13 follow-up?

14 A Logically, I would look and see how the surgery was
15 progressing. They were very small.

16 Q Did you ever direct, or ask, the Defendant to check her scars?

17 A No.

18 Q So I want to ask, you said that when you and the Defendant
19 met each other, you were working at a Mexican fast food restaurant; is
20 that right?

21 A Yes.

22 Q Throughout the entire time that you and the Defendant were
23 together, were you always working in either that restaurant, or a
24 different restaurant?

25 A For a time the first one, and then in another one.

1 Q Throughout the relationship, how many days a week would
2 you work?

3 A Six.

4 Q Did the Defendant work consistently throughout your
5 relationship?

6 A No

7 Q What type of work did the Defendant do?

8 A I don't know if -- exactly. It's construction, but he would do
9 what was tile.

10 Q You said he didn't always work. How often would he work?

11 A So sometimes he would work for two weeks and then he
12 would rest for four weeks. Sometimes he'd work for three, and then he
13 would rest for more than four.

14 Q Now was that consistent throughout the relationship, or did
15 that change as time went on?

16 A At first it was like that, and then later the work reduced. And
17 so he would be at work less time.

18 Q Would the Defendant ever take any of the children to work
19 with him?

20 A Yes.

21 Q Who would go to work with him when he did work?

22 A Jose Juan.

23 Q Why, if you know, would Jose Juan go to work with the
24 Defendant?

25 A He would take him in order to teach him.

1 THE INTERPRETER: I'm sorry, I'm going to correct my -- the
2 interpreter would like to correct translation. He would take him so he
3 would learn.

4 Q During the course of your relationship with the Defendant,
5 did Meily ever work outside the home?

6 A No.

7 Q Did you want Meily to work?

8 A No.

9 Q Why not?

10 A Well, no, I -- I think it wasn't time yet.

11 Q So she was 13 when you and the Defendant stopped living
12 together; is that fair?

13 A Yes.

14 Q Okay. And Jose Juan would have been 12 at that time?

15 A Yes.

16 Q Did you want Jose Juan to work at that point?

17 A No.

18 Q Why didn't you want him to work?

19 A Because he was still little.

20 Q Okay. So you indicated that throughout the course of your
21 relationship, you were working six days a week; is that right?

22 A Yes.

23 Q So I want to draw your attention to July of 2016. Were you
24 still working about six days a week at that time?

25 A Yes.

1 Q Now did you have a normal shift that you would work every
2 day that you went to work?

3 A Yes.

4 Q What was your shift?

5 A In the morning.

6 Q Okay, did you ever work in the afternoons?

7 A Yes.

8 Q What would depend -- or why would you work sometimes in
9 the morning, and then sometimes in the afternoon?

10 A They would change my shift.

11 Q Okay. So it wasn't necessarily a set schedule?

12 MR. SPEED: Objection, Your Honor. Leading.

13 THE COURT: Sustained.

14 BY MS. SUDANO:

15 Q So you would work different times on different days.

16 MR. SPEED: Objection, Your Honor. Leading.

17 THE COURT: Overruled.

18 THE WITNESS: Yes.

19 BY MS. SUDANO:

20 Q Typically, how would you get to work in July of 2016?

21 A Some days Gustavo would take me, and other days I would
22 drive myself.

23 Q Okay, on the days that Gustavo would take you to work, how
24 would you get home?

25 A He would take me, and he would pick me up.

1 Q Okay, how would that decision be made, whether you drove,
2 or the Defendant drove you?

3 A It would depend on his work.

4 Q Can you explain that for me a little bit?

5 A If he couldn't get out before 3:00 p.m., I would drive myself
6 to work.

7 Q Okay. And the days that he was home and not working,
8 were those the days that he would drive you?

9 A Yes.

10 Q Now I want to draw your attention to July 11th of 2016. Do
11 you remember that day?

12 A Yes.

13 Q Were you working on July 11th of 2016?

14 A Yes, in the afternoon.

15 Q Do you remember the time of your shift that day?

16 A From 3:00 to 10:00.

17 Q Do you remember if that was a day where the Defendant
18 drove you, or you drove yourself?

19 A He took me.

20 Q Did something unusual happen while you were at work that
21 day?

22 A Yes.

23 Q Did you get a phone call?

24 A Yes.

25 Q Who was the phone call from?

1 A From Meily.

2 Q Were you actually able to talk to Meily over the phone?

3 A Yes.

4 Q How did Meily sound as you were talking to her over the
5 phone?

6 A Scared.

7 Q What makes you say she sounded scared?

8 A She's my daughter, I know her.

9 Q Okay. Could you tell if she was doing anything while she
10 was talking to you on the phone?

11 A She was -- she was anxious, she was scared, and she was
12 saying that Gustavo was going to hurt her.

13 Q Do you remember specifically what she said about how
14 Gustavo was going to hurt her?

15 A Gustavo would say that -- Gustavo said that he didn't want
16 her to live with me anymore.

17 Q Did he say -- or did she tell you that anything had happened
18 between her and Gustavo?

19 A That Gustavo had forced a kiss on her.

20 Q Did she indicate to you when that had happened?

21 A That day.

22 Q Did she say that anything else had happened?

23 A She would only say that the following day -- he said that the
24 following day when he went to drop me off and came back, that she
25 would be with him.

1 Q Were those her words, that she would be with him?

2 A Yes.

3 Q What did you understand that to mean?

4 A I was just -- I just told her that nothing was going to happen.
5 That he wasn't going to hurt her. That I wasn't going to let him hurt her.

6 Q Okay. When you were talking to her on the phone that day,
7 did she indicate that anything had happened prior to the kiss that day?

8 A Not yet.

9 Q Okay. At some point during the conversation, did she
10 provide that information to you?

11 A I don't remember.

12 Q At some point, did she tell you that something else had
13 happened?

14 A Just the following day I made the decision to -- to report him,
15 because she told me that he had touched her.

16 Q Okay. And did she indicate to you that the touching had
17 happened before or after the kiss? If you know.

18 A I don't remember.

19 Q Now Meili, you said that on that day, July 11th of 2016, you
20 had gone to work at about 3:00 p.m. ; is that right?

21 A Yes.

22 Q Do you remember about what time it was when Meili called
23 you that afternoon?

24 A It was before 5:00.

25 Q What, if anything, did you do after you talked to Meily on the

1 phone?

2 A I didn't know what to do. I just told her when we spoke on
3 the phone that nothing was going to happen, that I wouldn't let anything
4 happen.

5 Q Did you leave work when Meily called you before 5:00?

6 A No, I stayed at work.

7 Q Why did you stay at work?

8 A There were only two of us working.

9 Q Did Gustavo come to pick you up that night?

10 A Yes.

11 Q What were you doing that night, when Gustavo came to pick
12 you up?

13 A Just that he would arrive -- he arrived at 10:00 and just that --
14 10:05 I came out.

15 Q Did you say anything to the Defendant that night when he
16 came to get you?

17 A No.

18 Q Why not? And I'm going to stop you there, ma'am.

19 A Because I was afraid of his reaction. I was scared that if I
20 commented on what the girl had said to me.

21 Q So before you left work, did you talk to Meily about what she
22 should do that evening, before you got home?

23 A I just told her to act as if she hadn't said anything to me, so
24 that he wouldn't realize that she had, and he wouldn't hurt her. And to
25 try to always be with her brother.

1 Q So after you got home from work that night on July 11th, did
2 you talk to either Meily or Jose Juan?

3 A I couldn't talk.

4 Q Okay. So I want to go then to the next day, to July 12th of
5 2016. What happened that morning?

6 A Just that we woke up, Gustavo and I. He went to work. He
7 took Jose Juan with him, and I stayed home with Meily and the two
8 babies.

9 Q Okay. Were you still trying to act like everything was
10 normal?

11 A Yes.

12 Q What, if anything, did you do after the Defendant went to
13 work that morning?

14 A I spoke to my daughter.

15 Q What, if anything, did you do after you talked to Meily?

16 A I called the police.

17 Q Do you know about what time you called the police that day?

18 A After 9:00.

19 Q Do you know about what time the Defendant and Jose Juan
20 left that morning?

21 A After 8:00.

22 Q Did the police respond?

23 A Yes, but they took a long time in arriving.

24 Q Who was there at the house when the police responded?

25 A Just Meily, my babies and I.

1 Q Why did you let Jose Juan go to work with the Defendant
2 that morning?

3 A If I didn't let him go, it would be like -- like letting Gustavo
4 know.

5 Q Now you said that the police got there. It took a while, but
6 they got there. What, if anything, happened, once the police got there?

7 A They arrived, and they took Meily's and my statements.

8 Q Did you let the police know that you were expecting the
9 Defendant to come back?

10 A Yes.

11 Q Did you know exactly what time he would come back from
12 work?

13 A From 10:30 to 11:00.

14 Q Okay, was there a precise time, or was it sort of just when
15 work was done?

16 A That day he was only going for a little while, but he was -- he
17 was to come home to eat something.

18 Q Did you also let the police know how it was that you
19 expected him to get back to the house?

20 A Yes.

21 Q Did you expect him to come back in a vehicle?

22 A Yes.

23 Q What kind of vehicle?

24 A A blue Chevy truck.

25 Q Did you also provide that description, the blue Chevy truck to

1 the police?

2 A Yes, and I gave them the license plate number.

3 Q Did you also let them know that your oldest son was with the
4 Defendant?

5 A Yes.

6 Q While the police were there, was there ever a conversation
7 about you and the children leaving the residence to go someplace else?

8 A They told me that I had to leave, but I wasn't going to leave
9 Jose Juan.

10 Q Did somebody else arrive at the residence before you left?

11 A While the police was giving me instructions on what we had
12 to do, I saw that Gustavo -- no, I heard Gustavo, the truck, arrive. And
13 when Gustavo saw the police with me outside the house, he left in the
14 car. And I thought that I would never see my son again.

15 MR. SPEED: Objection, Your Honor. I would ask that the
16 witness's response be stricken. Obviously, I don't understand Spanish,
17 but she testified as to what Gustavo saw.

18 THE COURT: Counsel, approach.

19 [Sidebar begins at 12:03 p.m.]

20 MR. SPEED: Your Honor, I know we have this problem, but
21 she doesn't know what Gustavo saw, and she can't testify to it. But I
22 don't know if she's going to say that until after the translation is
23 complete.

24 THE COURT: Well --

25 MR. SPEED: She also said she heard the truck pull up, she

1 didn't see it.

2 THE COURT: -- I don't under -- obviously, I --

3 MS. SUDANO: Well, she did. She could --

4 MR. SPEED: She didn't see it.

5 THE COURT: The question was -- the question was -- or her
6 answer, was she concerned for her son.

7 MS. SUDANO: That's --

8 MR. SPEED: That's fine, but she said I -- Gustavo saw the
9 police and turned around. She doesn't know what Gustavo saw. And
10 there's no way for me to predict what she's saying while the translation
11 is ongoing.

12 MS. SUDANO: Well, then just ask the --

13 MR. SPEED: All right. That will work.

14 THE COURT: That's fine.

15 MS. SUDANO: Just what --

16 MR. SPEED: And sustain the objection, please.

17 THE COURT: I'll sustain the objection.

18 MS. SUDANO: But just strike that phrase.

19 THE COURT: And rephrase it.

20 MS. SUDANO: Well, Your Honor, if we're striking, we're just
21 striking what she says Gustavo saw. The rest of it's proper.

22 THE COURT: I didn't -- I didn't think she finished the answer.
23 I -- she was still translating.

24 MS. SUDANO: Right.

25 MR. SPEED: But we heard English. That's how I know she

1 said Gustavo saw. That's the only way I could raise the objection, Your
2 Honor. You understand?

3 THE COURT: Yes.

4 MR. SPEED: Yeah.

5 MS. SUDANO: Well, the rest should stand.

6 THE COURT: All right.

7 MS. SUDANO: Just that part.

8 THE COURT: I'm sustaining. All right. Thank you.

9 MR. SPEED: Thank you.

10 [Sidebar ends at 12:05 p.m.]

11 THE COURT: I'm sustaining the objection. Rephrase the
12 question.

13 BY MS. SUDANO:

14 Q All right. And so, ma'am, I'd asked you whether anybody
15 came back while the police were still there. And you indicated that you
16 heard the truck come back. Is that right?

17 A Yes.

18 Q At that point, did you actually see the truck?

19 A Yes.

20 Q What did you see the truck do?

21 A Stopped. And then moved forward.

22 Q Okay. How did it move forward?

23 A It left. Hard.

24 Q Do you remember which direction -- in which direction it left?

25 A Yes, I was on this side. And he went left -- he went right.

1 Q Did he go -- or did the truck go in the same direction it had
2 come in from, or did it turn around?

3 A The same direction he came.

4 Q What was your reaction to seeing the truck drive away?

5 A Fear.

6 Q What were you scared of at that point?

7 A He was taking my son.

8 Q Now at some point shortly thereafter, did the police tell you
9 to go somewhere else within the complex?

10 A No, that I had to go to --

11 Q I'm going to actually stop you there. That wasn't -- I'm sorry,
12 that wasn't my question. So let me ask it better for you. At some point,
13 did you -- did the police ask you to move the truck?

14 A Mine or his?

15 Q His truck?

16 A Yes.

17 Q Okay. Where was the truck when the police asked you to
18 move it?

19 A It was almost exiting the -- the living complex.

20 Q Did you take the truck and move it?

21 A Yes, I took it back to the house, so that the tow truck wouldn't
22 take it away.

23 Q And at that point, when you went over to the entrance or the
24 exit to the complex, to get the truck, did you see Jose Juan?

25 A Yes.

1 Q Okay. And did Jose Juan come back with you?

2 A Yes, the police had him.

3 Q Okay. And then you started to say that after that, you went
4 with the police somewhere else. And was that to do interviews?

5 A To make statements or for our protection.

6 Q Court's indulgence.

7 MS. SUDANO: Thank you, Your Honor, no further questions.

8 THE COURT: Counsel approach.

9 MR. SPEED: May I --

10 [Sidebar begins at 12:10 p.m.]

11 THE COURT: Okay. All right. The interpreter is
12 [indiscernible]. I don't need to know that. Okay. You have quite some
13 time, and we've been going more or less since 8:30.

14 MR. SPEED: I do need to use the men's room, Your Honor.

15 THE COURT: What are --

16 MR. SPEED: By the way, yeah.

17 THE COURT: What are we going to -- what are we dealing
18 with her?

19 MS. SUDANO: Just finishing with her, you mean? I don't
20 know, but I have to leave, too, so.

21 MR. SPEED: At 1:30, you're walking out of the building.

22 MS. SUDANO: I have to be there. And it's going to take me
23 a good 15 minutes probably to walk to the court.

24 MR. SPEED: Let's start -- I have to take a restroom break
25 right now.

1 THE COURT: Yeah.

2 MR. SPEED: But let's start and we'll go as far as we can until
3 13:00. Until 1:00.

4 THE COURT: All right.

5 MR. SPEED: Is that fair? 1:00 is enough time?

6 MS. SUDANO: Maybe 1:15.

7 THE COURT: Okay, we'll take a short break now.

8 MS. MACHNICH: One additional thing before this interpreter
9 goes anywhere. But we can do outside of the presence, once they're out.

10 THE COURT: No, she's leaving.

11 MS. MACHNICH: Right. I need her for something outside the
12 presence of the jury. But we're doing that now, that's fine. So just don't
13 let he leave in the next few minutes.

14 THE COURT: Okay. We're getting another one.

15 MS. MACHNICH: I know, it's not about that.

16 [Sidebar ends at 12:11 p.m.]

17 THE COURT: All right, ladies and gentlemen, we're going to
18 take a short recess. During this recess, you're admonished do not talk or
19 converse amongst yourselves or with anyone else on any subject
20 connected with this trial, or read, watch, or listen to 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 newspapers,
23 television, radio or internet.

24 Do not form or express any opinion on any subject
25 connected with the trial until the case is finally submitted to you. We'll

1 take ten minutes. As I said, you're going to get a long lunch, but it's not
2 going to be until about five or ten after 1:00. Okay, thank you.

3 THE MARSHAL: Please leave your notebooks and pens. Rise
4 for the jury.

5 [Jury out at 12:12 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: All right. We're on the record, outside -- do
8 you need to go?

9 THE INTERPRETER: I do, I have another engagement.

10 THE COURT: Okay. We have another -- we have another
11 translator.

12 MS. MACHNICH: I need this translator for a second, Your
13 Honor.

14 THE COURT: Okay.

15 MS. MACHNICH: Specifically --

16 MS. SUDANO: Hold on, can we have the witness step down?

17 THE COURT: Yeah.

18 MS. MACHNICH: That's fine. But please don't let the
19 interpreter leave.

20 THE COURT: All right. You can step down and take a break.
21 Defense, what?

22 MS. MACHNICH: Your Honor, a little while ago, there were --
23 there were two separate times when Ms. Sudano stopped the witness
24 from talking and redirected the question or got the question back on
25 track. The second time, I'm not talking about that one. I'm talking about

1 the first time she stopped. There was a full statement by the witness,
2 and then the interpreter got halfway through and Ms. Sudano stopped
3 her from talking. I observed after that -- we know that one of our jurors
4 speak Spanish. She then was talking with a couple of the people next to
5 her in the row.

6 And so I have a concern that what was said, but not
7 translated was something that should not have been heard by the jury. I
8 don't know that that's true. But I do need to know what was said, and
9 not translated, based on the timing, and based on the fact that, my
10 observations of the jury at that point and how the one on the end had
11 talked to the one next to her, and the one next to her. There were bunch
12 of them talking. It could have been about the weather or lunch, but it
13 was right after that.

14 MS. SUDANO: Can I be heard on that? So the one that I
15 remember where I stopped her was because it was actually the very last
16 answer that she gave. She ended up saying that. When she said that
17 they went to that building at Pecos and Bonanza and she said that it
18 was -- she said it was to give statements and their protection is what she
19 ultimately testified to. When I stopped it, it was because I didn't hear her
20 fully, and I was worried that she said protection order. I don't think that
21 that's what she said, but that's why I stopped it.

22 MS. MACHNICH: And that's not the time I'm concerned
23 about.

24 MS. SUDANO: Oh.

25 MS. MACHNICH: I'm concerned with the time before that.

1 MS. SUDANO: Oh, the time before that, she didn't actually --
2 she -- everything was translated. The second time -- or the first time
3 everything was translated. I stopped it because I was concerned that if I
4 let her keep talking, she was going to say something else. So she never
5 said anything that wasn't translated on that one.

6 MS. MACHNICH: I was concerned Your Honor, that --

7 THE COURT: All right. Let's ask the interpreter.

8 THE INTERPRETER: In order to answer that question, I would
9 need to know what the question was, and see if I can locate it on my
10 notes.

11 MS. MACHNICH: Okay, it immediately followed, did you tell
12 Meily what to do? And this was in reference to the phone call with her
13 mother on July 11th. And she had said something about told her to act
14 like nothing had happened. That there had been no call, something like
15 that. And to always be with her brother. I believe that statement
16 happened right after. But there was like -- I think that was the follow-up
17 question.

18 But I think that there was something in between that was
19 said, but not translated. Because -- because the State stopped Madam
20 Interpreter from speaking at that point. But it sounded like the witness
21 had already made the statement. And I'm concerned because that juror
22 understands Spanish. If something wasn't translated, we need to know
23 what was on the record.

24 THE INTERPRETER: To my best recollection, I translated the
25 entire comment. She stated that -- that she had told her daughter to -- to

1 act normally, to not say anything about having told her mother. And to
2 stay with her brother at all times. And that was the entirety of her
3 response to that question, so far as my recollection goes.

4 MS. MACHNICH: And just to follow-up. So when Ms.
5 Sudano stopped you, you had already finished speaking? Because it
6 sounded like you were mid-interpretation at that point. If we're talking
7 about the same question.

8 THE INTERPRETER: To my best recollection, I had finished
9 translating the entirety of her statement.

10 MS. SUDANO: And if I may, the statement that she
11 translated stopped in the middle, because the -- or the witness's
12 statement stopped in the middle.

13 THE INTERPRETER: Yes.

14 MS. MACHNICH: Okay.

15 THE INTERPRETER: That is correct.

16 MS. MACHNICH: And then I -- I remember there being -- you
17 had stopped her, and I thought the rest of the statement continued on
18 with the brother. And that was fine.

19 THE COURT: All right.

20 MS. MACHNICH: I just wanted to make sure there was
21 nothing else.

22 THE COURT: Thank you.

23 MS. MACHNICH: Because there was some talking after that.
24 So if that's the case, then we've made our record.

25 MR. SPEED: And also, for the record, Your Honor, just so

1 that we're clear. I understand that Ms. Sudano does speak some
2 Spanish; is that correct?

3 MS. SUDANO: Yes, Your Honor.

4 MS. MACHNICH: Okay. Okay.

5 THE COURT: Okay.

6 MS. MACHNICH: That clarifies it. Thank you.

7 THE COURT: I've already instructed them regarding the
8 interpreters. I don't know what else I can do.

9 MR. SPEED: That's -- I think we're fine.

10 MS. MACHNICH: It is what it is.

11 THE COURT: Thank you.

12 MR. SPEED: We're fine with everything that's been created.
13 Thank you, Judge.

14 THE COURT: Thank you.

15 MS. MACHNICH: Thank you.

16 THE COURT: Take a break.

17 [Recess taken from 12:17 p.m. to 12:25 p.m.]

18 [Outside the presence of the jury]

19 THE COURT: All right, then anything else?

20 MS. MACHNICH: No, Your Honor.

21 MS. SUDANO: No, Your Honor.

22 THE COURT: Bring them in.

23 [Counsel and Court confer]

24 THE MARSHAL: Please rise for the jury.

25 [Jury in at 12:31 p.m.]

1 [Inside the presence of the Jury]

2 THE COURT: All right. Please be seated. The parties
3 acknowledge presence of the jury?

4 MR. SPEED: Yes, Your Honor. Thank you.

5 MS. MACHNICH: Yes, Your Honor.

6 THE COURT: You're still under oath. Cross exam. Go
7 ahead.

8 CROSS-EXAMINATION

9 BY MR. SPEED:

10 Q Ms. Casillas Ortiz, I'm going to talk to you about a few things
11 that you just finished discussing with Ms. Sudano. Do you understand
12 that?

13 A Yes.

14 Q If I start going too fast, feel free to stop me, okay?

15 A Yes.

16 Q Now you were just discussing with Ms. Sudano that you
17 work at a fast food Mexican restaurant, yes?

18 A Yes.

19 Q And isn't it true that it is your brother, Cesar, who is the boss
20 of that restaurant. He operates that restaurant, yes?

21 A Yes.

22 Q The restaurant that you were employed at in July of 2016?

23 A Yes.

24 Q And on July 11th, you testified that you received a call from
25 your daughter, yes?

1 A Yes.

2 Q The only daughter that you have. Your daughter, Meily, yes?

3 A Yes.

4 Q And she informed you that some things had been happening
5 with her stepfather, Gustavo, yes?

6 A Yes.

7 Q You went to work in the afternoon on July 11th, yes?

8 A Yes.

9 Q At about 3:00 or 3:15 or so?

10 A Yes.

11 Q And you received this call from your daughter, informing you
12 that some inappropriate things had been happening between her and
13 her stepfather, at around 5:30. Isn't that right?

14 A Yes.

15 Q But you stayed at work and finished your shift?

16 A Yes.

17 Q At the restaurant that your brother -- your biological brother
18 operates, yes?

19 A Yes.

20 Q Do you remember talking to a police detective about the
21 things that Meily told you had been happening between her and
22 Gustavo, yes?

23 A Could you repeat the question?

24 Q You remember talking to a police detective, about the things
25 that Meily told you had been happening between her and Gustavo, yes?

1 A Yes.

2 Q And you remember telling that police detective that you are
3 the only girl, or the only female child, the only daughter, in a family of
4 four boys?

5 A You mean her?

6 Q No, you, Ms. Casillas Ortiz.

7 A Yes, I'm the only daughter with four other siblings.

8 Q We know that one of your brothers lives here in the United
9 States. He operates the restaurant, yes?

10 A Yes.

11 Q And you have another adult male brother, who lives her in
12 Las Vegas, yes?

13 A Yes.

14 Q And you talked about changes that you observed to Meily's
15 behavior, yes?

16 A Yes.

17 Q And your testimony earlier today was that those changes in
18 Meily's behavior occurred around the same time in 2016, when you
19 received the call from Meily; isn't that right?

20 A I received the call in July.

21 Q Of 2016? Isn't that right?

22 A Yes.

23 Q Your testimony was that Meily was quiet, she no longer had
24 the same kind of joy.

25 A Yes.

1 Q And your testimony was that you realized that in July of
2 2016, right?

3 MS. SUDANO: Your Honor, I'm going to object. That
4 misstates her testimony.

5 THE COURT: Overruled.

6 BY MR. SPEED:

7 Q Your testimony was that you realized these changes that Meily
8 had undergone in July of 2016; isn't that right?

9 A Not in July, on the same year.

10 Q Your testimony was that you realized those changes that
11 Meily had undergone in July of that same year? Yes? Wasn't that your
12 testimony earlier with Ms. Sudano?

13 A Yes, but the change was throughout the year.

14 Q The change was throughout the year in 2016? That's what
15 your testimony is now?

16 A That's what I said.

17 Q That's what you said. Okay. Do you remember saying
18 something different when you spoke to the detective on the day that the
19 police arrived at your mobile home?

20 A I don't recall.

21 Q You don't recall. Do you recall telling Detective Huth that
22 you noticed these changes in Meily's behavior something like two years
23 ago? You went on to tell the detective that Meily had surgery on her
24 ovary two years ago -- a year and a half ago, and that you observed
25 those changes around that time?

1 A Yes.

2 Q You also told Detective Huth that two years ago, around the
3 time that Meily had her surgery, she became quiet. Yes?

4 A Yes.

5 Q She would look like she was thinking, but not telling you
6 what she was thinking about, around the time she had the surgery, right?

7 A Yes.

8 Q When you talked to her, and this is you explaining what was
9 happening in your family to the detective on the day police arrived at
10 your house. Your statement then was that she was thinking something
11 else when I talked to her?

12 A Yes.

13 Q And that these behavioral changes, you observed them
14 about two years prior to 2016, yes?

15 A Yes.

16 Q And also about two years prior to 2016, you and Gustavo
17 celebrated the birth of your -- we call it a me-baby. Your second oldest
18 son. Your second youngest son, yes?

19 A Yes.

20 Q That is Adonay, yes?

21 A Yes.

22 Q Who was born around October -- or I'm sorry, October 2nd of
23 2014; isn't that correct?

24 A Yes.

25 Q You also testified earlier with Ms. Sudano that you and

1 Gustavo moved in with one another sometime around September, or the
2 fall of 2013, the beginning of 2014, yes?

3 A Yes.

4 Q When the two of you started living together, you were
5 expecting your second youngest son, yes?

6 A My first.

7 Q I'm talking about Adonay. You were expecting Adonay
8 around the time that you and Gustavo moved in with one another, yes?

9 A Yes.

10 Q Now to your knowledge, Ms. Casillas Ortiz, you said that you
11 and Gustavo were a couple, right?

12 A Yes.

13 Q Gustavo was not born in the United States; isn't that right?

14 A No.

15 Q Now I want to direct your attention to July 12th of 2016.

16 A Yes.

17 Q You do recall that date, yes?

18 A Yes.

19 Q That was the day that police arrived at your mobile home off
20 of Boulder Highway, Space No. 254, yes?

21 A Yes.

22 Q After the police came, and you said that you saw the police
23 remove Jose Juan and Gustavo from the truck --

24 MS. SUDANO: I'm going to object, Your Honor. That
25 misstates her testimony.

1 MR. SPEED: I'll rephrase, Your Honor.

2 BY MR. SPEED:

3 Q You indicated earlier that you heard the truck pull into the
4 mobile home complex, yes?

5 A Yes.

6 Q Did you ever see Gustavo and Jose Juan exit the truck?

7 A They did not exit.

8 Q Okay. So you didn't see that?

9 A I saw them, but okay.

10 Q So you did see them, now?

11 A I did.

12 Q Okay, go ahead, please.

13 A The truck arrived with Gustavo and Jose Juan.

14 Q Right. Go ahead.

15 A So when Gustavo turns around to look at me and see the
16 police --

17 MS. SUDANO: Objection, Your Honor. I'd ask the witness to
18 stop testifying about what Gustavo saw and instruct the jury to strike
19 that response.

20 THE COURT: Sustained.

21 MS. SUDANO: Or to disregard that response.

22 THE COURT: Counsel approach.

23 [Sidebar begins at 12:43 p.m.]

24 THE COURT: Hold on. They're not here.

25 MR. SPEED: It's the translation, Your Honor. And I -- I can't

1 do anything about it.

2 THE COURT: Yes, you can. You asked what happened next,
3 and she goes off --

4 MR. SPEED: Well, but in Spanish.

5 THE COURT: Yes.

6 MR. SPEED: All right. Just instruct them to disregard, and
7 I'll move on, Your Honor.

8 THE COURT: All right.

9 MR. SPEED: Thank you.

10 [Sidebar ends at 12:44 p.m.]

11 THE COURT: The jury is instructed to disregard the answer,
12 let's move on.

13 BY MR. SPEED:

14 Q Let's talk about when you were going to the place for -- I
15 believe you said for Meily's protection and your protection, and Jose
16 Juan's protection, yes?

17 A Yes.

18 Q As far as your memory serves you, that is where Jose Juan
19 and Meily interviewed, or spoke to a lady about what had been
20 happening with Meily, yes?

21 A Yes.

22 Q Did all of you go in the same car or truck?

23 A No.

24 Q How did you all arrive at the place where Jose Juan and
25 Meily spoke with the lady?

1 A I have a white Explorer. The truck that he -- he had went
2 back to the house.

3 Q How did you, Jose Juan, and Meily arrive at the place where
4 Meily and Jose Juan talked to the lady?

5 A The police, they were ahead of me. I was in the middle and
6 there was another police officer in the back. They directed me, you
7 know, how to arrive at that place.

8 Q Ms. Casillas Ortiz, my question is were Jose Juan and Meily
9 in the white Explorer with you?

10 A Yes.

11 Q And on the way to the place where Jose Juan and Meily
12 spoke with the lady about what had been happening with Meily, the
13 three of you talked about everything, yes?

14 A Yes, separately.

15 Q Okay. While in the white Explorer, going to the place,
16 correct?

17 A Yes.

18 Q And your understanding at that time was that Gustavo forced
19 a kiss on Meily, on July 11th, right?

20 A Can you repeat that?

21 Q Your understanding at that time, in the white Explorer, with
22 your son, and your daughter, was that Gustavo forced a kiss on Meily, on
23 July 11th. Isn't that right?

24 A Can you detail the question?

25 Q Can you recall what you answered -- or how you answered

1 that question earlier this morning?

2 A Yes.

3 Q When you were talking with Ms. Sudano, your testimony was
4 that you had learned that Gustavo had forced a kiss on Meily, on July
5 11th; isn't that right? The day before police arrived.

6 A Yes. Yes.

7 Q And that you were afraid on July 12th, he was going to do
8 something more. That's what Meily told you; isn't that right?

9 A Yes.

10 Q But Meily didn't say anything on the way to the place where
11 she spoke with the lady about oral sex, or Gustavo putting his finger in
12 her vagina; did she?

13 A I don't recall.

14 Q You don't recall anything like that happening on July 11th;
15 do you?

16 A I got confused.

17 Q You don't recall anything like that happening on July 11th?
18 On the day that Meily called you at work; do you?

19 A Only what I stated.

20 Q Only what you stated. I think that's all, Your Honor. Thank
21 you.

22 THE COURT: Redirect?

23 MS. SUDANO: Yes, thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. SUDANO:

1 Q So Meili, you indicated that you had all talked separately on
2 July 12th of 2016. The day that you went down for the interviews?

3 A Yes.

4 Q When you say talked separately, what do you mean by that?

5 A Meily was interviewed in a different place than they
6 interviewed Juan. And I was interviewed at a different location.

7 Q So when you were talking to the police or law enforcement in
8 general, you were all separated; is that right?

9 A When I was interviewed at that place, we were separate. But
10 when the police arrived at my home, we were all together.

11 Q And so the police, when they were speaking with your
12 daughter, Meily, were they speaking in English or in Spanish?

13 A In English.

14 Q Okay. How is your understanding of English?

15 A Little.

16 Q And at the same time that an officer was speaking with Meily
17 in English, was there also another officer talking to you in Spanish?

18 A No.

19 Q Did you understand everything that Meily was saying to that
20 officer in English?

21 A Some words, yes.

22 Q But some words, no?

23 MR. SPEED: Objection, Your Honor. Leading.

24 THE COURT: Sustained.

25 BY MS. SUDANO:

1 Q Were there words that you didn't understand, or things that
2 you didn't understand?

3 A Yes.

4 Q So you were asked whether or not you drove with your kids
5 to that other location to be interviewed. Do you recall being asked that?

6 A Yes.

7 Q Okay. What were you talking about during that car ride over
8 to be interviewed?

9 A I don't recall. Nothing.

10 Q Were you talking about what Meily had said happened?

11 MR. SPEED: Objection, Your Honor. Leading.

12 MS. SUDANO: It's not leading.

13 THE COURT: Overruled.

14 THE WITNESS: I don't recall.

15 BY MS. SUDANO:

16 Q You also indicated that you had talked to Meily the morning
17 of July 12th, 2016, before you called the police. Do you recall that?

18 A Yes.

19 Q What were you talking to Meily about that morning?

20 A About what he had done to her.

21 Q Was she giving you details, or was she just telling you kind
22 of broadly?

23 A That he had touched her.

24 Q Did she give you much -- or did she give you any more
25 details than that?

1 A That he had -- that Jose Juan the other night at work and he
2 went back to the house. She was there with the -- the small baby. The
3 baby was already asleep. And then he took her to the -- to the bedroom.
4 He made her lay in the bed, on her stomach, and pull down her shorts.
5 She was telling her to stop, and then until the baby started crying that he
6 stopped.

7 Q Okay. Now you'd indicated previously that both of your
8 older kids take care of both of the younger kids. Do you recall that?

9 A Yes, the two youngest ones.

10 Q Has Meily ever complained, or told you that she doesn't want
11 to take care of the younger brothers?

12 A No, she would never say that.

13 Q Did she ever tell you before the phone calls on July 11th, that
14 she didn't want the Defendant to be in the house anymore?

15 A She didn't want him in the house.

16 Q But did you know that before July 11th?

17 A That day.

18 Q Now we talked a little bit about your work. How far did you
19 go in school, ma'am?

20 A Ninth grade.

21 Q And you were also asked some questions about when you
22 saw the truck coming back to the mobile home on July 12th. Do you
23 remember being asked those questions?

24 A Yes.

25 Q I believe you indicated that you saw the truck and the

1 Defendant and Jose Juan in the truck initially; is that right?

2 A Yes.

3 Q But you didn't see him get out of the truck on your street. Is
4 that fair?

5 A They -- they never got out. The truck just pulled up, stopped
6 and then left.

7 Q And would it be fair to say that the next time you saw the
8 truck, there was nobody in it?

9 A Could you repeat the question?

10 Q So the next time you saw the truck was when you went to go
11 move it?

12 THE INTERPRETER: I'm sorry, say again.

13 BY MS. SUDANO:

14 Q The next time you saw the truck was when you went to go
15 move it?

16 A Yes.

17 Q Okay. And the Defendant and Jose Juan were no longer in
18 the truck?

19 A No.

20 Q All right. You were asked some questions about your work
21 at the restaurant, and the fact that it was your brother's restaurant,
22 where you got the phone call from Meily on July 11th.

23 A Yes.

24 Q Did you tell your -- either of your brothers that day what had
25 happened?

1 A No.

2 Q Why not? Why not?

3 A Nobody knows anything. I didn't want any problems. I
4 didn't want people finding out.

5 Q You mentioned earlier, were you also afraid to tip off the
6 Defendant?

7 MR. SPEED: Objection, Your Honor. Leading.

8 THE COURT: Sustained.

9 THE WITNESS: Yes.

10 MR. SPEED: Your Honor.

11 THE COURT: The answer will be stricken.

12 BY MS. SUDANO:

13 Q Did the Defendant himself have anything to do with why you
14 didn't leave work that day?

15 MR. SPEED: Your Honor, may we approach?

16 THE COURT: Yes.

17 [Sidebar begins at 12:58 p.m.]

18 MR. SPEED: Why didn't she call? I didn't want anybody to
19 find out. Did the Defendant have anything to do with her not wanting
20 anybody to find out?

21 MS. SUDANO: So all I'm trying to do is that she was scared
22 to tell him because of his reaction. I'm just trying to clean that up, but if I
23 can't lead her to that, then I'm going to ask it in an open-ended way.

24 THE COURT: Then what's your objection? If she asks --

25 MR. SPEED: The question -- it's asked and answered, first.

1 That question was leading, whether the Defendant had anything to do
2 with why she didn't want anybody to find out. The answer is suggested
3 in the question. It's the very definition of a leading question.

4 THE COURT: It is, but I thought her last question -- well --

5 MR. SPEED: That was it.

6 THE COURT: All right.

7 MR. SPEED: She answered completely. "I didn't want
8 anyone to find out." The follow up is, well, did you not want to tip off the
9 Defendant. That was leading. The objection --

10 THE COURT: Yes.

11 MR. SPEED: -- was sustained.

12 THE COURT: I sustained that.

13 MR. SPEED: The next question as, well, did the Defendant
14 have anything to do with you not wanting anyone to know what was
15 happening with you and Meily.

16 MS. SUDANO: I think my actual question was why she --
17 whether he had anything to do with her not leaving work, which was --

18 MR. SPEED: Well, that wasn't the question, but --

19 MS. DIGIACOMO: That's what I --

20 MS. SUDANO: And that was the --

21 THE COURT: We could have it read back. All right.

22 Rephrase it. I think, assuming it was the latter rather than the former, it's
23 not leading, but go ahead and rephrase it.

24 MR. SPEED: Thank you, Your Honor.

25 [Sidebar ends at 12:59 p.m.]

1 THE COURT: Go ahead and rephrase the question.

2 BY MS. SUDANO:

3 Q Ma'am, did the Defendant himself have anything to do with
4 why you didn't leave work on July 11th after you had talked to Meily?

5 A He didn't know that she had called.

6 Q Were you trying to keep it that way?

7 A Yes.

8 Q And he also had to come and pick you up from work that
9 day, is that right?

10 MR. SPEED: Objection, Your Honor. Leading.

11 THE COURT: Sustained.

12 BY MS. SUDANO:

13 Q How were you supposed to get home from work that day?

14 A He was going to pick me up.

15 Q Did you want him to know anything had happened before he
16 picked you up?

17 A No.

18 MS. SUDANO: Thank you, Your Honor. Nothing further.

19 THE COURT: Recross.

20 RECROSS-EXAMINATION

21 BY MR. SPEED:

22 Q Earlier when I was asking you about your recollection of
23 what occurred on July 11th and then on July 12th when the police
24 arrived at your house, one of your responses to my questions was, only
25 what I stated, yes. Do you remember saying that?

1 MS. SUDANO: Your Honor, I'm going to object as to vague.
2 I don't know what question elicited that answer.

3 MR. SPEED: The last question that I asked --

4 THE COURT: If she understands.

5 MR. SPEED: -- Ms. Casillas Ortiz.

6 THE WITNESS: You've confused me.

7 MR. SPEED: I've confused you.

8 BY MR. SPEED:

9 Q Today, you're saying that in addition to Meily telling you that
10 Gustavo forced a kiss on her on July 11th, you're always saying that
11 Meily told you that Gustavo forced her to lay down on her stomach; isn't
12 that right?

13 A On the 12th.

14 Q On the 12th. So Meily didn't tell you that that occurred on
15 the 11th, did she?

16 A She told me on the 12th.

17 Q She told you on the 12th?

18 A On the 11th, she told me that he had kissed her by force.

19 Q I see.

20 A And that on the next day, after I was at work, he was going to
21 come back.

22 Q He was going to come back?

23 A Yes.

24 Q That's what you understood?

25 A Yes.

1 Q And all of these things are details that Meily relayed to you;
2 isn't that right?

3 A Yes.

4 Q You didn't see anything like that happen between your
5 daughter and Gustavo, did you? I'm sorry. Ms. Casillas Ortiz, you didn't
6 see any of those things happen between Meily and Gustavo, did you?

7 A No.

8 Q Thank you, ma'am.

9 THE COURT: Questions from the jury?

10 [Sidebar begins at 1:03 p.m.]

11 THE COURT: All right. Hopefully five more minutes. That'll
12 give you enough time?

13 MR. SPEED: Yeah.

14 MS. SUDANO: Yeah. I can work fast.

15 THE COURT: I think some of them are still writing, but I'm
16 not sure. All right. We should be done in five minutes.

17 [Pause]

18 MS. DIGIACOMO: That's quite a stack.

19 MR. SPEED: Uh-huh.

20 THE COURT: You look at this one, you look at this one, and
21 I'll look at this one.

22 MR. SPEED: Good. Definite no.

23 MS. DIGIACOMO: Yeah, we have no objection.

24 THE COURT: These two. So 21?

25 MR. SPEED: That's fine.

1 THE COURT: Steve?
2 MS. DIGIACOMO: Yep.
3 MS. SUDANO: Yep.
4 MR. SPEED: Yes.
5 THE COURT: Okay.
6 MS. DIGIACOMO: This one?
7 MR. SPEED: That's a no.
8 MS. DIGIACOMO: We're okay with it.
9 THE COURT: No? Oh.
10 MR. SPEED: That's a no.
11 THE COURT: Okay, so you're objecting?
12 MR. SPEED: Yes.
13 MS. DIGIACOMO: What about whether she was --
14 THE COURT: What about the last part? Has he ever given
15 her a reason to --
16 MR. SPEED: Right.
17 MS. DIGIACOMO: Well, that I don't think, but I think the fact
18 that, you know, is there a reason --
19 THE COURT: Is she frightened of the Defendant?
20 MR. SPEED: No.
21 THE COURT: What's your objection to that?
22 MR. SPEED: Because it starts to go into the domestic
23 violence.
24 THE COURT: The specific --
25 MR. SPEED: I'm sorry. It goes into the domestic violence.

1 The domestic violence report was made at the same time as her
2 disclosure of sexual abuse, so all of her contact with the police, all of her
3 contact with law enforcement in general, to borrow Ms. Sudano's
4 phrasing, has to do with Gustavo beating her, making her a victim of
5 domestic violence, as well as his alleged raping of Meily. So to ask this
6 question why she was afraid --

7 THE COURT: Not why.

8 MR. SPEED: Did she have a reason to be afraid.

9 THE COURT: No. Is she frightened of the Defendant?

10 MR. SPEED: Frightened. Yes. Why are you frightened?

11 Because he beats me.

12 THE COURT: Well, it's different. It doesn't say "why". These
13 are their three questions. The first one, I agree. The first one is what
14 reason does she have. Okay, but then -- and then it says, previous
15 issues, there must be a reason, okay. But then it says -- well, actually I
16 transposed it. It says, she is frightened. If it said, is she frightened by
17 the --

18 MR. SPEED: Right.

19 THE COURT: -- Defendant, that's -- I don't see any objection
20 to that.

21 State?

22 MS. DIGIACOMO: Well, I agree. You can ask is she
23 frightened without going into why.

24 MR. SPEED: But no one can instruct her or advise her now
25 as to how she's supposed to answer that question, and we've already

1 seen that if we give this witness an opportunity to explain her questions
2 in Spanish, after the translation is made before the jury, we'll have all
3 sorts of inadmissible evidence.

4 THE COURT: All right.

5 MS. DIGIACOMO: Your Honor, that's a yes or no answer.

6 MR. SPEED: Has she given any of those --

7 MS. DIGIACOMO: Excuse me.

8 MR. SPEED: Has she given any of those this morning?

9 THE COURT: Counsel, let her finish.

10 MS. DIGIACOMO: Oh my gosh. All I'm saying is if you say,
11 this is a yes or no question, are you afraid of Gustavo or whatever the
12 question says, she can answer yes or no, and we don't have to go into
13 why.

14 THE COURT: Is this --

15 MR. SPEED: But the Court can't read the question that way.

16 MS. DIGIACOMO: Sure. I've had courts --

17 MR. SPEED: You have to read the --

18 MS. DIGIACOMO: I have had courts say, this is a yes or no
19 question.

20 MR. SPEED: Wow.

21 MS. DIGIACOMO: Or a yes or no answer, and then read the
22 question.

23 MR. SPEED: That's not the questions from the jurors. I've
24 never had a court do that. The practice has commonly been, at least in
25 my experience, that the Court reads the question exactly the way that it's

1 prepared by the juror.

2 THE COURT: In order to avoid problems, I'm not going to
3 give that. I --

4 MS. DIGIACOMO: Well, Your Honor --

5 THE COURT: I would like to give that one -- you put your
6 reason, but the person who put it didn't even write it correctly for --

7 MR. SPEED: Thank you, Your Honor.

8 THE COURT: -- is she -- all right.

9 MS. DIGIACOMO: And also, just for the record, she already
10 did testify she was afraid of him.

11 MR. SPEED: Then it's asked and answered.

12 THE COURT: All right. Here, this one is better. Read this.

13 MR. SPEED: I didn't see this one. This is new. I'm not
14 asking that one.

15 MS. MACHNICH: He's in custody.

16 MR. SPEED: Right.

17 MS. DIGIACOMO: The first part is fine. Are you afraid of him
18 now?

19 MR. SPEED: That gives her --

20 MS. DIGIACOMO: As to her credibility to --

21 MR. SPEED: And we certainly want to attack it. That gives
22 her reason to maybe blurt out that he --

23 MS. DIGIACOMO: Excuse me. We can't get to the mic and
24 you're all the way on our side of the bench.

25 MR. SPEED: When I'm finished --

1 MS. DIGIACOMO: Can you just please --

2 MR. SPEED: When I'm finished, I'll give you your
3 opportunity, Sandy. I promise.

4 MS. DIGIACOMO: No, can you -- you're crowding her out.
5 Can you just move over?

6 THE COURT: All right.

7 MR. SPEED: Your Honor, that gives her an opportunity -- this
8 witness an opportunity to go into him being in custody. She's not afraid
9 of him now because he's with the police, and I haven't seen him since
10 2016 when the police took him away.

11 THE COURT: All right. Thank you. Move on.

12 MS. SUDANO: Can I -- thank you. All right. So the first part
13 of that is absolutely an appropriate question. The second part of it even
14 is still appropriate because yes, it does go to her credibility which has
15 been subject to attack. It doesn't open it up to any inappropriate
16 answers.

17 THE COURT: And that's the yes or no question.

18 MS. SUDANO: Yes.

19 THE COURT: All right. I'm giving -- it's Court's Exhibit 20 to -
20 - I don't see any problem.

21 MR. SPEED: And what was the second part? Was that one a
22 two-part, also?

23 THE COURT: Do you think he would try to harm you or your
24 children?

25 MR. SPEED: So the Court is giving the first part, but not the

1 second?

2 THE COURT: No, I'm giving them both.

3 MR. SPEED: Well --

4 THE COURT: I think she -- do you think --

5 MR. SPEED: Your Honor, it goes to custody and it goes to
6 punishment now.

7 MS. DIGIACOMO: How does that go to --

8 THE COURT: The answer is yes or no.

9 MR. SPEED: Do you think he'll harm your children? Well no,
10 because the last time I saw him --

11 THE COURT: No. It's a yes or no -- I'll make sure I will put --
12 as it's a yes or no question, I think that's absolutely appropriate to do.
13 Here's this one.

14 MR. SPEED: And that she's instructed to answer only -- oh,
15 I'm sorry, Your Honor.

16 THE COURT: Yes or no.

17 MR. SPEED: That she's instructed --

18 THE COURT: Yes.

19 MR. SPEED: -- to answer only yes or no.

20 MS. SUDANO: Oh, sorry. I had --

21 MR. SPEED: No, you see that one? Absolutely no, Your
22 Honor.

23 MS. DIGIACOMO: They haven't opened the door to the
24 [indiscernible].

25 MR. SPEED: Right, and this would.

1 MS. SUDANO: Wait. Does it say -- so basically --

2 MS. MACHNICH: In possession of --

3 MS. SUDANO: No. Anger -- threats would be okay. It's just
4 we can't get into any hitting or domestic violence, but threats would be
5 okay.

6 THE COURT: Yeah.

7 MR. SPEED: Meily testified yesterday that he had never
8 threatened her.

9 MS. SUDANO: No, that's not what she testified to.

10 THE COURT: No, that's not what she testified.

11 MR. SPEED: Well --

12 THE COURT: All right.

13 MS. SUDANO: I think if you just say that he --

14 THE COURT: Did the Defendant ever show signs of anger,
15 aggression, violence towards you -- the violence part, though, is --

16 MS. DIGIACOMO: Is no, but --

17 MR. SPEED: We can't start striking parts of the question,
18 Your Honor. That's the issue. If the Court is going to read the previous
19 question and instruct her that it requires a yes or no response, that's fine,
20 but now, to strike one part of the juror's question and leave in all the
21 others is improper. Plus, we believe that this question creates an avenue
22 for this particular witness with her propensity to go into narratives to
23 touch on the domestic violence issue.

24 MS. DIGIACOMO: I don't think there's a propensity for
25 narratives, Your Honor. He asked an open-ended question and didn't like

1 what he got.

2 THE COURT: I disagree that we can't amend the question.
3 That is not at all what the -- oh, that's constitution of rights. Anyway, I
4 don't have the actual statute here regarding -- that's exactly why you get
5 to ask follow-ups.

6 MR. SPEED: Right. To proper questions, Your Honor.

7 THE COURT: Court will --

8 MR. SPEED: We would still raise an objection if the question
9 is improper, and I believe that this one would create an avenue for an
10 inadmissible evidence --

11 THE COURT: Well --

12 MR. SPEED: -- by this witness.

13 THE COURT: -- I think it's also cumulative with the other one
14 that I'm asking, so in order to avoid problems, I won't ask that one.

15 MR. SPEED: Thank you, Your Honor.

16 THE COURT: But this one, you have to read, I think.

17 MS. SUDANO: Those are appropriate.

18 MS. MACHNICH: No wrong witness -- no.

19 THE COURT: Did you see -- oh, crap. Did you see this one?
20 Is this the one that you --

21 MS. SUDANO: Yeah, that one's fine.

22 THE COURT: Okay. That one --

23 MS. MACHNICH: That one's fine.

24 THE COURT: -- you both agreed on?

25 MR. SPEED: Yes.

1 THE COURT: All right. What's this? Number 24. Did Juan
2 Jose want to go to work or was he doing what he was told?

3 MS. MACHNICH: It's the wrong witness.

4 THE COURT: Any objection?

5 MS. MACHNICH: Yes.

6 THE COURT: Defense?

7 MS. MACHNICH: Yes.

8 THE COURT: What's your objection?

9 MS. MACHNICH: It's the wrong witness. That would be
10 hearsay or speculation, but this is not the witness for that. That was the
11 question for Jose and he already testified.

12 THE COURT: State?

13 MS. SUDANO: Your Honor, I think she answer it to the
14 extent that she knows. It would be based on her observations and it's
15 not coming from hearsay.

16 THE COURT: It's what he was telling her.

17 MS. MACHNICH: It comes from his statements.

18 THE COURT: She can testify if he's doing what he's told.

19 MS. DIGIACOMO: And if it's --

20 THE COURT: And maybe she told him.

21 MS. DIGIACOMO: -- the Defendant told him it's not hearsay
22 and if she tells him it's not --

23 MR. SPEED: Well, but that's not the question, Your Honor.

24 MS. MACHNICH: No.

25 THE COURT: Did Juan Jose want to go to work or was he

1 doing what he was told? If she knows. All right.

2 MS. MACHNICH: And it's irrelevant.

3 THE COURT: I'll give him that one.

4 MS. MACHNICH: It's also irrelevant.

5 THE COURT: Did you have any fear of the Defendant prior to
6 the call from your daughter?

7 MS. MACHNICH: That's -- objection by the Defense.

8 MR. SPEED: Right.

9 MS. MACHNICH: Absolute --

10 THE COURT: Objection what?

11 MS. MACHNICH: Objection by the Defense. We would
12 object.

13 THE COURT: Yes. What's your objection?

14 MS. MACHNICH: It's going to open the door to the domestic
15 violence. It is absolutely going to open the door to the domestic
16 violence. We did not -- it's not appropriate.

17 THE COURT: Yeah. I --

18 MS. MACHNICH: Fear is not appropriate --

19 THE COURT: State?

20 MS. DIGIACOMO: It doesn't open the door. It's a yes or no.

21 THE COURT: It's a yes or no.

22 MS. DIGIACOMO: And like I said, there's already been
23 threats testified to by Meily, so --

24 MS. MACHNICH: But our hands are tied on follow-up, Your
25 Honor.

1 MR. SPEED: Right.

2 MS. MACHNICH: We can't say anything to --

3 MS. DIGIACOMO: So are ours.

4 THE COURT: I get that. So all right. I'm giving it. All right.

5 Thank you.

6 MR. SPEED: So Your Honor, just so we're clear, which ones

7 are going, and which ones are not?

8 THE COURT: These are all going.

9 MR. SPEED: So the yes's and the no's, right?

10 THE COURT: These are all going. The ones that aren't

11 going, I gave back to her.

12 MR. SPEED: Okay. And this one has the yes or no in --

13 THE COURT: I'm going to instruct her, several of these are

14 yes or no.

15 MR. SPEED: Okay. Thank you.

16 [Sidebar ends at 1:16 p.m.]

17 THE COURT: Okay. As I said, I read these, so it isn't

18 necessarily the same as talking to you or -- most of these are yes or no

19 questions; do you understand that?

20 THE WITNESS: Yes.

21 THE COURT: Did Gustavo complain about your daughter not

22 working?

23 THE WITNESS: Yes.

24 THE COURT: In Mexico, is it typical for the entire family to

25 work, even if they were as young as 12 years old?

1 THE WITNESS: Yes.

2 THE COURT: Are you afraid of Gustavo now?

3 THE WITNESS: Yes.

4 THE COURT: Do you think he will try to harm you or your
5 children?

6 THE WITNESS: Yes.

7 THE COURT: Did Juan Jose want to go to work or was he
8 doing what he was told?

9 THE WITNESS: He would comply, but he didn't want to go.

10 THE COURT: Did you have any fear of the Defendant prior to
11 the call from your daughter? Yes or no?

12 THE WITNESS: Always.

13 THE COURT: Thank you. Any follow-up from the State?

14 MS. SUDANO: No. Thank you, Your Honor.

15 THE COURT: Any follow-up from the Defense?

16 MR. SPEED: No, Your Honor. Thank you.

17 THE COURT: Thank you. You may step down. Ladies and
18 gentlemen, we're going to take our recess. You don't have to be back
19 here until 3:00.

20 During this recess, you're admonished, do not talk or
21 converse amongst yourselves or with anyone else on any subject
22 connected with this trial, or read, watch, or listen to any report of or
23 commentary on this trial, or any person connected with this trial by any
24 medium of information, including, without limitation, newspapers,
25 television, radio, or internet. Do not form or express any opinion on any

1 subject connected with the trial until the case is finally submitted to you.
2 Three o'clock.

3 THE MARSHAL: Please leave your notebooks and pens.

4 [Jury out at 1:19 p.m.]

5 [Recess taken from 1:19 p.m. to 3:10 p.m.]

6 [Outside the presence of the jury]

7 THE MARSHAL: -- come to order. Department 28 is, again, in
8 session.

9 THE COURT: So tomorrow --

10 MS. DIGIACOMO: Yes.

11 THE COURT: -- what time?

12 MS. DIGIACOMO: I thought you said nine. Here --

13 THE COURT: Depending; yeah.

14 MS. DIGIACOMO: And I think we have -- we have the two
15 officers that should be pretty quick and the forensic examiner today, and
16 then tomorrow, I think we're only going to have -- we should rest
17 tomorrow. So I would say if we start at nine, other than I have to read in
18 the preliminary hearing transcript, and so I would say we rest by noon.

19 MS. SUDANO: That seems fair.

20 MS. DIGIACOMO: Yeah? I say we rest by noon. So if they
21 have a Defense case, then they can start --

22 THE COURT: Then we need to be prepared to do closings
23 tomorrow afternoon if, in fact, you don't have anything. We don't know.

24 MS. DIGIACOMO: Should we meet earlier to do -- well, I
25 don't --

1 MS. MACHNICH: Yeah. We have --

2 MS. DIGIACOMO: -- know if you want to wait until after the
3 close of evidence, Kevin. Do you --

4 MR. SPEED: Yeah.

5 MS. DIGIACOMO: Okay.

6 MR. SPEED: That's --

7 MS. DIGIACOMO: So maybe we'll take time to go over the
8 jury instructions. I think -- I believe that it's three of them that we're
9 going to be arguing over.

10 THE COURT: So what you're saying is basically, you want to
11 do that Thursday?

12 MS. DIGIACOMO: Yes, tomorrow.

13 THE COURT: Tomorrow is Thursday.

14 MR. SPEED: Right.

15 MS. DIGIACOMO: After the close of all evidence.

16 THE COURT: All right.

17 MS. DIGIACOMO: Because if they do put on a cross, it may
18 change.

19 THE COURT: Yep, and there you could have your rebuttal.
20 I ate my leftover wings, which are garlic.

21 MS. MACHNICH: Garlic.

22 MS. DIGIACOMO: Garlic?

23 MS. MACHNICH: Yeah.

24 THE COURT: So I put in the thing in case you guys have to
25 come up.

1 MR. SPEED: I'm getting a whiff, Your Honor.

2 THE COURT: Well, they're -- you know, I didn't get to go out.
3 I missed the meeting, you know, and I have stuff to do. I'm going to go
4 ahead and go through the canvas, if you will, regarding the Defendant's
5 right to testify. As far as I know, there's no reason he can't do it the day
6 before.

7 MS. DIGIACOMO: That's correct, Your Honor, and he has
8 until tomorrow to make his decision.

9 THE COURT: Right.

10 MS. DIGIACOMO: Yes.

11 THE COURT: Okay.

12 MR. SPEED: So 9 a.m. tomorrow.

13 THE COURT: Yeah, please stand up.

14 MS. DIGIACOMO: Oh, Your Honor, we just found out
15 something else. The witness, the forensic interviewer, leaves town
16 tomorrow, so we need to get her done tomorrow, apparently.

17 THE COURT: Well, that's okay because we -- I thought I told
18 him it could go as late as 5:30.

19 MS. DIGIACOMO: Yes.

20 THE COURT: Mr. Gunera-Pastrana, you have the right, under
21 the Constitution of the United States, and under the Constitution of the
22 State of Nevada, not to be compelled to testify in this case. Do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: That means no one can make you take the

1 witness stand and make you answer any questions. Do you understand
2 that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You may, if you wish, give up this right, and
5 you may take the witness stand and testify. If you do, you will be subject
6 to cross-examination by the District attorney, as well as your own
7 attorney, and anything that you say, whether it is in the answers to
8 questions put to you by your attorney, or by the District attorney, will be
9 the subject of fair comment when the District attorney speaks to the jury
10 in final argument; do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If you choose not to testify, the court will not
13 permit the District attorney to make any comments to the jury
14 concerning the fact that you have not testified. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: If you elect not to testify, the Court will instruct
17 the jury only if your attorney specifically requests an instruction which
18 reads substantially as follows: The law does not compel a Defendant in
19 a criminal case to take the stand and testify, and no presumption may be
20 raised, and no inference of any kind may be drawn from the failure of a
21 Defendant to testify. Counsel may submit a different, but similar
22 instruction if they prefer to use that.

23 Do you have any question that you'd like to ask me or your
24 attorney about your constitutional rights? Sorry. If it's for your attorney,
25 do it in private. If you have a question for me, go ahead.

1 THE DEFENDANT: Okay.

2 THE COURT: Okay. We'll take a minute.

3 MR. SPEED: Your Honor, may we? Thank you.

4 THE COURT: Yes.

5 [Pause]

6 THE COURT: Mr. Gunera-Pastrana, did you get a chance to
7 speak with your attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: Did your attorney answer any questions you
10 may have had?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you have any questions you'd like to ask me
13 regarding your constitutional rights?

14 THE DEFENDANT: No.

15 THE COURT: And I think it was clear that your decision isn't
16 until tomorrow, but I wanted to get this done. If you choose to testify
17 and you've been convicted of a felony within the past 10 years or have
18 been on parole or probation for a felony within the past 10 years, the
19 District attorney will be permitted to ask you three questions -- well,
20 three categories:

21 If you have been convicted of a felony, what was the felony,
22 and when it happened. No details may be gone into regarding any prior
23 felony convictions. If you deny a felony conviction, the State may
24 impeach your testimony with certified copies of conviction, which may
25 contain more information in them than simply what the felony was and

1 when it occurred. Thank you.

2 THE DEFENDANT: Yes, I understand.

3 THE COURT: Thank you. Okay. So you can be seated. And
4 anything else outside?

5 MS. DIGIACOMO: No, Your Honor.

6 THE COURT: Where'd Steve go?

7 MR. SPEED: Your Honor, for the record, I believe I had my
8 thumb on the silencing button on the microphone. Mr. Gunera-Pastrana
9 did indicate that he understood the Court's last admonishment.

10 THE COURT: Thank you. Yes, I heard, but maybe it wasn't --
11 okay. Bring them in.

12 THE MARSHAL: Please rise for the jury.

13 [Jury in at 3:27 p.m.]

14 [Inside the presence of the jury]

15 THE COURT: Please be seated. Parties acknowledge
16 presence of the jury?

17 MS. DIGIACOMO: Yes, Your Honor.

18 MR. SPEED: Yes, Your Honor. Thank you.

19 THE COURT: State, call your next witness.

20 MS. DIGIACOMO: Thank you. The State calls Officer David
21 Delaria.

22 [Pause]

23 THE MARSHAL: Watch your step, sir. Remain standing.
24 Face the Clerk of Court.

25 DAVID DELARIA, STATE'S WITNESS, SWORN

1 THE CLERK: Thank you. Please be seated. State and spell
2 your name for the record.

3 THE WITNESS: My name is David Delaria. Last name is
4 D-E-L-A-R-I-A.

5 MS. DIGIACOMO: May I, Your Honor?

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MS. DIGIACOMO:

9 Q Sir, how are you employed?

10 A I'm employed with the Las Vegas Metropolitan Police
11 Department.

12 Q How long have you been employed with Metro?

13 A Eleven years.

14 Q And what is your current assignment?

15 A My current assignment is traffic. A motorcycle officer.

16 Q Oh, I'm sorry. A motorcycle officer?

17 A Yes.

18 Q All right. Now, I want to direct your attention back to July of
19 2016. What was your assignment that month?

20 A During that year, I was assigned to southeast area command
21 and I was a field training officer.

22 Q All right. So specifically, July 12th, 2016, were you still
23 employed and working as a field training officer?

24 A Yes, ma'am.

25 Q Can you just briefly explain to the jury your duties as a field

1 training officer?

2 A A field training officer is to teach and evaluate new trainees
3 at different stages throughout the field training program. We make sure
4 that they're following correct legal procedures, law, and the policy,
5 department policy.

6 Q All right. Now, in February -- so February 12th, 2016, did you
7 have a trainee with you?

8 A Yes.

9 Q Okay. And would that have been at the beginning of the
10 training period or the end of the training period, or in the middle?

11 A Well, each trainee goes through multiple field training
12 officers during the program, so the one I had at that time would've been
13 at the end, which is called solo beat.

14 Q Okay, solo beat. So what does that mean? What does that
15 entail?

16 A Solo beat is the last -- the last phase of the field training
17 program where the field -- the trainee is expected to operate on his own
18 and I'm more of a shadow than I am actually an instructor. So I just
19 evaluate what they're doing and make sure that things are going all
20 right, but they are supposed to be taking the load -- a hundred percent of
21 the load of the work at that time.

22 Q So it's fair to say you're just riding along and answering
23 questions if needed?

24 A Yes.

25 Q Okay. So on July 12th, 2016, did you and your trainee

1 respond to a call at the Miracle Mile Trailer Park?

2 A Yes, ma'am.

3 Q Well, first of all, let me ask you, do you remember who your
4 trainee was that day?

5 A Yes. It was Officer Kravetz.

6 Q Okay. On that day when you're going to that call, you're
7 riding in the same car with him?

8 A Yes, we were that day.

9 Q All right. And would be driving and doing everything?

10 A Yes. Yes.

11 Q When you get to the call, do you remember, did you and
12 Officer Kravetz arrive first or did -- were there other officers there?

13 A No, we arrived first.

14 Q all right. So when you and Officer Kravetz arrived, did you
15 go straight up to the door?

16 A No, ma'am.

17 Q Okay. What did you do?

18 A Being that they're operating as a solo beat officer and
19 because they're supposed to be operating on their own, department
20 policy would dictate that he would need to wait for his backup. He was
21 not looking at me as his backup. So he was -- he would be -- he waited
22 for the other trainee, and the -- that's also in solo beat, to arrive, so that
23 they could handle the call together.

24 Q Okay. And was that Officer Larson that --

25 A Yes, I believe so.

1 Q -- was the other trainee that day?

2 A Yes.

3 Q Okay. So Officer Larson would've come with his field
4 training officer?

5 A Correct.

6 Q All right. Now when you go to a call such as the one in this
7 case, do you pull right in the driveway of the residence?

8 A No. We have a standard procedure where when we arrive on
9 calls, we park two to three houses away from the target house, on the
10 same side of the road as that house.

11 Q And was that done in this case?

12 A Yes, ma'am.

13 Q All right. Now, do you -- on this date, were you responding
14 to space number 254 on Pine Street inside Miracle Mile Trailer Park?

15 A I don't recall that, in that detail, but if that's what's in the
16 report, then yes, that's what we responded to.

17 Q All right. Would it refresh your memory just to look at the
18 overhead aerial of the park?

19 A Sure.

20 MS. DIGIACOMO: May I publish, Your Honor?

21 THE COURT: Exhibit number?

22 MS. DIGIACOMO: It is admitted.

23 THE COURT: But just give the number.

24 MS. DIGIACOMO: Okay. I'm going to put -- show you State's
25 Exhibit number 2, if you can look on your screen.

1 BY MS. DIGIACOMO:

2 Q Do you -- I know it's kind of washed out, but do you --

3 A Yeah, it's --

4 Q -- recognize this?

5 A Yeah. I recognize it to be Miracle Mile Trailer Park; yes.

6 Q Okay. Do you recall about where in the trailer park you
7 responded to that call?

8 A It is a little fuzzy, but it's --

9 Q Would it be easier to see it not on the screen?

10 A Yeah, that's try that.

11 Q Okay.

12 A I can't --

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

14 THE WITNESS: -- make it out on there. Yeah, it would've
15 been -- it would've been int his area right here.

16 MS. DIGIACOMO: Okay. I'm going to put it on the screen
17 now --

18 THE WITNESS: Okay.

19 MS. DIGIACOMO: -- so if you don't mind pointing that out to
20 the jury where you just pointed. If you can.

21 BY MS. DIGIACOMO:

22 Q Do you see it on here?

23 A Yeah. It would've been right in the circle area right here. Not
24 quite right in the middle, but it would've been Pine Drive right there.

25 Q All right.

1 MS. DIGIACOMO: We're going to have to do this old school.
2 Do we have the pointer?

3 THE CLERK: The mouse is working.

4 THE COURT: Isn't the --

5 MS. DIGIACOMO: Is the mouse working?

6 THE MARSHAL: Yes.

7 MS. DIGIACOMO: Oh, I'm sorry. Okay. All right. And you
8 circled the area right there Pine Drive is written on the street.

9 THE MARSHAL: Counsel, you'll need the microphone.

10 MS. DIGIACOMO: It's on.

11 THE MARSHAL: You're not on.

12 MS. DIGIACOMO: It was on. Should I repeat that?

13 COURT RECORDER: Yeah.

14 MS. DIGIACOMO: Sorry, I had to walk up. I don't have my
15 glasses.

16 BY MS. DIGIACOMO:

17 Q So you circled the area you went to right where the street
18 name, Pine Drive, is written on this area map?

19 A Yes.

20 Q Do you know, would you have been -- was the trailer that you
21 went to, was it on the side of the street under Pine Drive to the more
22 right or would it have been on the other side above Pine Drive to the left?

23 A The house -- the trailer would've been more in this area here.
24 I don't know if that's on the other screen.

25 Q Okay, but I'm asking you, which side of the street. I

1 apologize.

2 A Oh, I'm sorry.

3 Q Let me show you --

4 A It would've been on the south side of the street.

5 Q On the south side, which would've been under where it's
6 written Pine Drive?

7 A Yes, under where it's written on there.

8 Q Okay, thank you. When you pulled onto Pine Drive, did you
9 park north of the -- wait. You said south, so that would've been east of
10 the house or west?

11 A Yes, we parked east of the house.

12 Q Okay. And then you walk up to the door once Officer Larson
13 arrives?

14 A Correct.

15 Q And you let Officer Kravetz and Officer --

16 A Larson.

17 Q -- Larson take command, I guess, of the call?

18 A Yes, they took the lead. They --

19 Q Did you actually go up to the residence with them?

20 A Yes, I did.

21 Q Did you go inside the residence with them?

22 A I never really entered in completely, but I did stand in the
23 doorway. It's kind of a small room there. I did stand in the doorway so
24 that I could hear the conversations that were going on.

25 Q Do you recall who --

1 MS. DIGIACOMO: And I don't know how to take this down.
2 That's still on the screen, Your Honor.

3 THE COURT: You mean erase it?

4 MS. DIGIACOMO: Yes, because I took the exhibit off, but it's
5 still showing. Thank you. Okay, thank you. Okay.

6 BY MS. DIGIACOMO:

7 Q So when you went up, do you recall who was present in the
8 trailer?

9 A Officer-wise or family-wise?

10 Q No, family-wise.

11 A I remember the mother, an infant with her, and then the girl,
12 the young girl. I believe she was around 12, 13 at that time.

13 Q And did she also have a young child around her?

14 A Yes, she did.

15 Q All right. When you arrived, do you recall what the mom's
16 demeanor was like?

17 A I do. She seemed very nervous, fidgety. She seemed afraid.

18 Q And what about the girl that you said was about 12 to 13
19 years old? What was her demeanor, or did you observe her demeanor?

20 A I didn't. Initially, she was calm, and she was able to speak
21 with us. She did not seem afraid of the police being there or anything
22 like that, but as the trainees began to question her, then she broke down
23 immediately and began crying, and then started to be afraid when we
24 started questioning her about her father or her stepfather.

25 Q Okay. Now, mom was Spanish speaking, correct?

1 A Yes, ma'am.

2 Q Was there anyone on the call that was able to communicate
3 with mom, or were you able to speak to her at all?

4 A I have limited Spanish, so I was able to speak to her a little
5 bit. No one else spoke Spanish on the call at that time.

6 Q Okay. Do you recall what the nature of the call was? What
7 you were dispatched to?

8 A It was -- I don't remember the call. I don't remember what
9 the call was. I believe it was a 426.

10 Q Okay, and that's fine because I don't think any of us know
11 numbers.

12 A Okay.

13 Q Just do you remember the general type of call it was?

14 A Yes, lewdness with a child.

15 Q Okay.

16 A Lewdness with a minor.

17 Q Okay. Now, when patrol officers respond to this type of call,
18 is it patrol's responsibility to do a full investigation?

19 A No.

20 Q Okay. What is patrol's responsibility?

21 A Basically, with patrol, we're not the detectives that are going
22 to actually go through the whole case, so we're just there. In cases like
23 that, we're going to establish the elements of the crime so that when we
24 call the sexual assault detectives, we can answer their questions as to
25 relating as to why we're even calling them, why do we think it's a sexual

1 assault crime. So we have to ask some underlying or foundational
2 questions to make sure that we have the elements of the crime before
3 we call them.

4 Q So is it fair to say it's a very basic questioning versus
5 something more in depth?

6 A Yes, it's more basic.

7 Q All right. So you establish enough to be able to call
8 detectives?

9 A Yes.

10 Q In this case, did Officer Kravetz and Officer Larson, did they
11 establish enough to need to call detectives?

12 A Yes, they did.

13 Q When you were speaking with them, was any information
14 provided to you about when the stepdad was coming home or what kind
15 of car he was driving?

16 A Yes.

17 Q And based upon the information you received, did you
18 officers make a decision to do something with your cars?

19 A Yes. We were -- I don't recall the actual time that this was
20 going on, but he was supposed to be coming home in a short time
21 period, like maybe 15 to 30 minutes or so from the time that we were
22 given that information.

23 So we elected to move our vehicles up closer to the actual trailer
24 because it -- where they were parked, if he was to come home and come
25 around the corner, he would've seen our cars and we did not want him

1 to see the patrol vehicles and then just turn around and leave.

2 Q Okay. So you moved your cars further down the street
3 versus right in that turn?

4 A Yes, we did.

5 Q At some point when you are there, after you've moved the
6 cars, did you ever see the car that had been described to you?

7 A Yes.

8 Q What kind of a car was described to you that he might be
9 coming home in?

10 A It was a pick-up truck.

11 Q Do you recall the color?

12 A I do not.

13 Q Did you ever see the pick-up truck at the trailer park?

14 A I did, but not when he came around the corner. One of the
15 other officers spotted him, and he began to exit and then we got into our
16 patrol car and stopped him at the entrance of the park.

17 Q Okay, and how would you have stopped him at the entrance?

18 A By activating lights and siren.

19 Q Okay.

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

21 THE COURT: Yes.

22 MS. DIGIACOMO: I'm going to show you what's been
23 marked for identification as State's proposed exhibit number 14. It is a
24 disc.

25 BY MS. DIGIACOMO:

1 Q Do you recognize this disc?

2 A Yes.

3 Q And how do you recognize it?

4 A It was a disc you showed me earlier and I signed my name

5 and P number to verify.

6 Q And when you say you signed your name and P number, can

7 you put on the record, specifically, what you wrote on there?

8 A It's the way we sign in the department. It's my first initial --

9 my P number, and my last initial.

10 Q So D --

11 A D --

12 Q -- 13338D?

13 A 38D. Correct.

14 Q All right. So that's how you can recognize this as the video

15 you watched?

16 A Yes, ma'am.

17 Q And what do you expect to find on this video?

18 A Body cam from the two -- or from my trainee of what was

19 happening inside the --

20 Q Okay.

21 A -- the trailer.

22 Q And is it specifically regarding the mom?

23 A Pretty much; yes.

24 Q Okay. And is it without sound?

25 A Yes, it's without sound.

1 MS. DIGIACOMO: Your Honor, at this time, I'd move for
2 admission of State's proposed exhibit 14.

3 THE COURT: Any objection?

4 MR. SPEED: None, Your Honor.

5 THE COURT: It'll be admitted.

6 [State's Exhibit 14 admitted into evidence]

7 MS. DIGIACOMO: And I would ask to publish.

8 THE COURT: Go ahead.

9 MS. DIGIACOMO: Thank you. Go ahead.

10 [Whereupon, a video recording, State's Exhibit 14 was played in
11 open court at 3:43 p.m.]

12 MS. DIGIACOMO: For the record, we're playing it. And
13 pause it.

14 [Video paused at 3:43 p.m.]

15 BY MS. DIGIACOMO:

16 Q The officer that we just saw In the doorway, do you
17 recognize who that was?

18 A Yes, I do. That was me.

19 Q Okay. And then the person that you referred to as mom, is
20 that who you see in this video?

21 A Yes, ma'am.

22 Q Okay.

23 MS. DIGIACOMO: You can go ahead and play.

24 [Video resumed at 3:43 p.m. and ended at 3:45 p.m.]

25 MS. DIGIACOMO: All right. The State will pass the witness.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. MACHNICH:

4 Q Hi, sir.

5 A Yes.

6 Q Very briefly. So the decision to like call our crime scene
7 analysts or get DNA analyzed and stuff like that, was that a call that you
8 and your trainee would make or one that the detective would make?

9 A One the detective would make.

10 Q Thank you.

11 MS. MACHNICH: We have nothing further for this witness.

12 Thank you.

13 THE COURT: Any redirect?

14 MS. DIGIACOMO: No, Your Honor. Thank you.

15 THE COURT: Questions from the jury? Raise your hand. No
16 questions.

17 Thank you, officer.

18 THE WITNESS: Thank you.

19 THE COURT: You may step down.

20 MS. DIGIACOMO: Your Honor, at this time, the State will
21 recall Officer Kravetz.

22 THE MARSHAL: Watch your step, officer. Remain standing.
23 Face the Court Clerk.

24 MATTHEW KRAVETZ, STATE'S WITNESS, SWORN

25 THE CLERK: Thank you. Please be seated. State and spell

1 your name for the record.

2 THE WITNESS: Thank you. Matthew Kravetz,
3 M-A-T-T-H-E-W, K-R-A-V-E-T-Z.

4 THE COURT: Go ahead.

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

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MS. DIGIACOMO:

9 Q Officer Kravetz, welcome back. I have here what's been
10 marked for identification as State's proposed exhibit number 13. Do you
11 recognize this?

12 A Yes, I do.

13 Q Okay. And how do you recognize it?

14 A It's a disc with my P number and initials.

15 Q Did you watch this disc earlier and then put on your initials
16 and P number so that you knew that that was the disc you watched?

17 A Yes, I did.

18 Q Okay. And we previously had talked about State's proposed
19 exhibit number 10 and state's proposed exhibit number 12 when you
20 testified previously about these are snippets of your interview with Meily
21 Moran from the body cam video, correct?

22 A Correct.

23 Q And State's proposed exhibit number 13, is that also a
24 snippet from speaking with her, taken from your body cam?

25 A That is correct.

1 Q And all three of these actually have sound?

2 A Correct.

3 MS. DIGIACOMO: Your Honor, at this time, I'd move for
4 admission of State's proposed exhibits 10, 12, and 13.

5 THE COURT: Any objection?

6 MS. MACHNICH: No objection, Your Honor.

7 THE COURT: They'll be admitted.

8 [State's Exhibits 10, 12, and 13 admitted into evidence]

9 MS. DIGIACOMO: Thank you. May I publish?

10 THE COURT: Yes, go ahead.

11 MS. DIGIACOMO: The first one we are going to publish,
12 Your Honor, is Exhibit 10.

13 [Whereupon, a video recording, Exhibit 10 was played in open
14 court from 3:48 p.m. to 3:49 p.m.]

15 MS. DIGIACOMO: Now the State is going to play State's
16 Exhibit Number 12.

17 [Whereupon, a video recording, State's Exhibit 12 was played in
18 open court from 3.49 p.m. to 3:54 p.m.]

19 MS. DIGIACOMO: We're going to play, for the record, State's
20 Exhibit 13.

21 Whereupon, a video recording, State's Exhibit 13 was played in
22 open court from 3:54 p.m. to 3:55 p.m.]

23 MS. DIGIACOMO: With that, Your Honor, we'll pass the
24 witness.

25 THE COURT: Cross-exam?

1 MS. MACHNICH: Just briefly, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MACHNICH:

4 Q Officer, just to highlight a few things, Ms. Moran told you
5 that it started last June?

6 A Approximately; yes.

7 Q Yes. And you were discussing the physical touching with her
8 and she said it happened about once a month for the last year?

9 A Correct.

10 Q Okay. You tried to clarify, and this was the second body
11 cam, what exactly went on, and you clarified that it was just touching?

12 A Correct.

13 Q Okay. And then she shared with you that yesterday, he
14 kissed me?

15 A Yes.

16 Q Okay. And then on the final body cam we just saw, you
17 asked her if he, meaning the Defendant, putting his finger inside of her,
18 and then she nodded?

19 A Correct.

20 Q All right.

21 MS. MACHNICH: Court's brief indulgence. Thank you,
22 Officer. Nothing further.

23 THE COURT: Redirect?

24 MS. DIGIACOMO: Yes, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. DIGIACOMO:

2 Q She told you that the first time it happened was in August of
3 2015?

4 MS. MACHNICH: Objection. That misstates his testimony on
5 the body cam.

6 MS. DIGIACOMO: Well, it doesn't --

7 MS. MACHNICH: And it's leading.

8 THE COURT: The jury has --

9 MS. DIGIACOMO: I can play the --

10 THE COURT: -- heard the testimony. They'll be the ones to
11 decide.

12 MS. DIGIACOMO: Thank you. Let me ask you.

13 THE COURT: Go ahead.

14 BY MS. DIGIACOMO:

15 Q Do you remember when she said the first time it happened
16 was?

17 A She said it was approximately a year prior to when I was
18 present there on that day.

19 Q Okay. And when you were asking her how often, you didn't
20 clarify how often he touched her. You just said how often it happened?

21 A Correct.

22 MS. DIGIACOMO: That's it, Your Honor. I'll pass.

23 THE COURT: Recross?

24 MS. MACHNICH: Nothing, Your Honor.

25 THE COURT: Questions from the jury? Raise your hand. No

1 questions. Thank you, Officer. You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Are you ready with the next witness?

4 MS. SUDANO: We are.

5 THE COURT: Go ahead.

6 MS. SUDANO: Yes, Your Honor. State calls Elizabeth
7 Espinoza.

8 THE MARSHAL: Watch your step. Remain standing. Face
9 the Clerk of the Court.

10 ELIZABETH ESPINOZA, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated. State and spell
12 your name for the record.

13 THE WITNESS: Elizabeth Espinoza, E-L-I-Z-A-B-E-T-H,
14 E-S-P-I-N-O-Z-A.

15 THE COURT: Go ahead.

16 MS. SUDANO: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. SUDANO:

19 Q Good afternoon, ma'am. Can you tell us how you're
20 employed, please?

21 A Yes. I work for the Department of Family Services as a
22 forensic interview specialist.

23 Q What is a forensic interview specialist?

24 A So what we do is we interview children who have either
25 witnessed violence or have experienced physical abuse or sexual abuse,

1 and we use a protocol called National Children's Advocacy Center
2 Protocol, in which we gather factual information using open-ended
3 questions where children volunteer information, and then we can follow-
4 up with verifying questions.

5 Q Do you have any training and experience that lends yourself
6 to a career as a forensic interview specialist?

7 A Yes, I do. I've worked with the Department for 14 years in
8 various units. Permanency, where we work with children in foster care
9 and we help them either reunify with families, or we find an alternative,
10 permanent plan for them. And previous to that, I worked as a probation
11 officer. I'm currently with the Children Advocacy Center, and I've
12 received a total of 160 hours for forensic interviewing. Forty hours were
13 done in Alabama at their headquarters for the NCAC.

14 Q And then the rest of it was done --

15 A Here.

16 Q Okay. Now, you said that you have a protocol that you kind
17 of follow for forensic interviews from the National Children's Advocacy
18 Center?

19 A Yes.

20 Q Can you just walk us through a little bit that protocol?

21 A Yes. So it's two phases. The first phase is rapport building,
22 and you know, we ask the child, tell me about your likes, dislikes, and
23 then we go over four specific rules with them to engage in that early.
24 We tell them about, you know, the truth, and real agreement. Don't
25 guess. If you don't understand the question, let me know and I'll

1 rephrase it, and if I say something that you stated incorrectly, let me
2 know so that I can fix it.

3 Q Okay.

4 A We ask about family members, everybody they live with,
5 what they like about them, what they dislike about them. We do what's
6 called a narrative practice. So we ask them about one specific event,
7 whether it be their day or a birthday so that we can kind of prepare them
8 for future questions, because what we're looking for is details, beginning
9 to end.

10 And then the second phase is the transition phase. That's where
11 we go into, tell me what you're here to talk about today, and then they
12 volunteer information, and then we can subsequently ask them
13 questions, but they volunteer whatever is going on and then we follow
14 up.

15 Q And is that the interview practice or the technique that you
16 follow in all of your interviews?

17 A We do, and there are times where we do get flexible with it,
18 in that if the child starts disclosing, you know, it could be during the first
19 phase. We don't tell the child stop because we have to go over the other
20 stages, so we just let them continue to give us information and then we
21 can ask more questions.

22 Q So you said that there's sort of the first phase where you're
23 building rapport with the child --

24 A Uh-huh.

25 Q -- and then you're going over the rules of the interview,

1 explaining that everything needs to be real that they're explaining to
2 you, and kind of going through with them the rules as far as if you don't
3 understand, let me know, if I repeat something incorrectly, let me know.
4 Do you sort of practice those rules with them?

5 A We do, but it's specific to younger children. So children 12
6 and under, we will practice the rules with. Children 12 and over, we
7 don't.

8 Q Okay. So that kind of leads me to another question for you.
9 You've said that it's -- that you're interviewing children?

10 A Yes.

11 Q Any particular age of children?

12 A We've interviewed as young as two years old to 18. I've had
13 special cases where I've interviewed a 34 and a 38 year old, but they
14 were cognitively delayed and those were special circumstances.

15 Q But in general, as little as two or so when they're kind of able
16 to talk and perform the interview with you, all the way up until 18?

17 A Yes.

18 Q Okay. And you said that's children that have witnessed or
19 experienced any number of different things?

20 A Yes.

21 Q How is it that children come in to be interviewed?

22 A So we have various collaterals. Law enforcement, children
23 protective services. Sometimes, our sister zones bring in children for
24 various reasons, and it's often times for sexual abuse, severe physical
25 abuse, things of those nature.

1 Q Okay. So it's a referral process?

2 A Yes.

3 Q Where do the interviews actually take place?

4 A They take place in a very small room. There's two cameras
5 above in the ceiling and a recorder. It's just myself and the child. The
6 detective or the CPS investigator who is in charge of the case observes
7 from another room.

8 Q Where is that actual building?

9 A At the Children's Advocacy Center.

10 Q Okay. And is that over on Pecos and Bonanza?

11 A Yes.

12 Q And are there some other agencies that are housed either in
13 that building or in that same complex?

14 A Yes. The whole concept is to have a multi-disciplinary team
15 there so that the child doesn't have to repeat their story to various
16 people, so we have law enforcement, we have medical staff there, we
17 have special advocates, children protective services, and law
18 enforcement and the forensic interviewers, as well.

19 Q Okay. And I apologize. I know that you said 14 years with
20 the Department of Family Services?

21 A Yes.

22 Q Remind me how long you've been a forensic interviewer.

23 A Four years.

24 Q Okay. So during those four years, how many forensic
25 interviews have you conducted?

1 A I haven't checked recently, but the last time I checked, it was
2 approximately 2,100.

3 Q Okay. Do all of those interviews take place in English?

4 A No. They take place in Spanish, also, because I am bilingual.

5 Q Okay. How is it determined whether an interview is in
6 English or Spanish?

7 A Usually, we ask the child or, you know, when they first bring
8 in the child, they'll tell me, this person only feels comfortable in Spanish,
9 or they may do English and Spanish, and we use whatever language the
10 child is comfortable with.

11 Q So you indicated that children come in to be interviewed
12 based on a referral process; is that correct?

13 A Yes.

14 Q What information, if any, do you have from the referring
15 agency at the time of your interview?

16 A Sometimes, we have a simple sheet that gives you
17 information about like the allegations, who's involved, what happened,
18 but it's very small in detail. We don't get a lot of information sometimes.
19 Sometimes, there's emergency cases that come in and we get a first
20 name and age in some allegations, but no details, and those are
21 considered acute cases, same day cases.

22 Q Okay. And so you said an acute case is a same day case.
23 What do you mean "same day"?

24 A So law enforcement or CPS gets a report and it's considered
25 to be an immediate acute case where, for example, the alleged

1 perpetrator is in the home with the victim and they have to bring them in
2 as soon as possible, or they're aware of a sexual abuse that has
3 happened or is happening.

4 Q Okay. And so when you say it's acute or it's immediate, you
5 don't mean that whatever event the child is coming to talk to you about
6 happened immediate prior to --

7 A Correct.

8 Q -- the interview? In fact, is it common for you to be
9 interviewing children about something that just happened, or is it
10 common to talk to children about things that may have happened further
11 back in time?

12 A We do both.

13 Q Okay. Is one more common than the other?

14 A I would say children who disclose -- delay disclosure years
15 later, they feel more comfortable talking about it, either because they've
16 been in therapy or they're no longer in the presence of the alleged
17 perpetrator.

18 Q Okay. And so my question was whether one is more
19 common than another. So an acute type disclosure or a delayed
20 disclosure?

21 A Rephrase, please?

22 Q I just want to make sure that you were clear on the question
23 you were answering, the question that I asked you. So I was asking
24 whether it was more common to be talking to children about an event
25 that just happened or if it's talking about events that had happened kind

1 of far back in the past?

2 A Both.

3 Q Okay. Now, you said that you'll talk about their family and
4 build a rapport, and then you'll sort of transition into whatever it is that
5 the child is there to see you about?

6 A Yes.

7 Q Do kids always sort of come right out and provide all of the
8 details to you?

9 A It depends on the case. It depends on the child. There are
10 times they just start -- you know, they walk in the door and either they're
11 crying or they're telling you what issue is on their mind, so it just
12 depends on the case.

13 Q Okay. Is the information that you receive always
14 chronological? So first, this happened, next this happened, and then
15 this?

16 A No.

17 Q Okay. Is it common at all to have chronological information
18 provided by a child?

19 A They can remember content more than they can remember
20 quantity, how many times, what happened first, what happened next.
21 They can recall the action itself and the experience.

22 Q Okay, but sometimes the date or the order is wrong?

23 A Correct.

24 Q Is it common to have all of the information provided right up
25 front or is it common to have the information sort of develop throughout

1 the interview?

2 A Develop throughout the interview.

3 Q Okay. Why is that?

4 A Because as they give us information, we then follow-up with
5 clarifying questions and they provide more information or more details.

6 Q Okay. Would it be fair to say that's part of the process that
7 takes it out of chronological order?

8 A It can; yes.

9 Q Okay. Would you say that the interviews that you conduct
10 are more of an ongoing process than sort of a single event?

11 A Sometimes, they provide single, multiple events. It just
12 depends on the case and what experiences they have.

13 Q Okay. And so I'm actually talking about the process of a child
14 talking to you and providing information to you. Is that kind of
15 something that evolves or is it something that just sort of happens once
16 as an event and that's it?

17 A It evolves.

18 Q Okay. So I want to switch a little bit and talk about the
19 interviews that you did in this particular case. Were you working on July
20 12th of 2016?

21 A Yes.

22 Q Did you have occasion to conduct interviews with Meily
23 Moran and Jose Moran?

24 A Yes.

25 Q Okay. So I want to talk first about your interview with Meily.

1 What was Meily's demeanor as you first interacted with her?

2 A As I first interacted, I asked her questions and she would
3 answer them. As it progressed, she displayed more anxiety. She looked
4 more anxious, she was tearful. I offered her a tissue box, and she held
5 the tissue and she tugged at it nervously the entire time. And at the end
6 of the interview, I believe there was just like a lot of little pieces of paper
7 from --

8 Q Okay.

9 A -- you know, she had this look of fear. Her eyebrows were
10 raised. You know, she couldn't stop fidgeting with her hands as she
11 appeared to be nervous.

12 Q Okay. You indicated that you speak both, English and
13 Spanish, and the language that's spoken during an interview is sort of
14 dependent on the child; is that fair?

15 A Yes.

16 Q In this particular case, did your interview with Meily happen
17 in English or in Spanish?

18 A It started in English, and then when she started crying, I
19 believe is when she switched to Spanish, and she just gave information.

20 Q Once she started to speak in Spanish, did you continue to
21 speak with her in Spanish?

22 A I did, but I told her I needed to step out of the room to speak
23 to the detective to make sure she had an interpreter, because she did not
24 speak Spanish.

25 Q Okay. So you indicated you are in one room and then there's

1 a detective or some other folks that may be watching the interview in a
2 different room?

3 A Yes.

4 Q Okay. And what's the purpose of that?

5 A Because they cannot conduct the interview. It has to be
6 somebody neutral, such as us. And best practice is for the forensic
7 interviewer to be alone with the child, and then the multi-disciplinary
8 team, which is the CPS investigator or law enforcement, watch from
9 another room, gather, take notes, and then as a team, when we meet, we
10 go over what other questions need to be asked.

11 Q So prior to speaking with Meily and Jose in this particular
12 case, did you have information about the allegations that brought them
13 to the CAC on the referral?

14 A I don't recall what information I have because we are not
15 allowed to keep documents or notes. I remember it was a same day case
16 in which they approached me, and they said, we have a child who is
17 being brought in by, I believe, patrol, and there's a concern about sexual
18 abuse, and that's all I remember.

19 Q Okay. And so you indicated on the same day cases, is it fair
20 to say that you typically have less information than you would if it's an
21 interview that's sort of scheduled out?

22 A Yes, Uh-huh.

23 Q Okay. So I want to ask you about some of the specific things
24 that Meily discussed with you.

25 A Uh-huh.

1 Q Did she describe a number of different incidents of sexual
2 abuse at the hands of her stepfather?

3 A Yes, she did.

4 Q Do you recall, specifically, how many things she told you
5 about?

6 A I recall three incidences, and I believe there was a fourth one
7 in which there was kissing on the mouth. Force -- a forced kiss, is what
8 she described.

9 Q So did she provide you with information about when that
10 kiss had happened?

11 A There were, I believe, two separate kisses. The kiss that was
12 referring to, I believe, at the time, was the day before he had forced her --
13 a kiss on her with his mouth, with his tongue, and he had stated to her
14 that the next day -- that her time was up, that the next day he was going
15 to have relationships with her.

16 Q Okay. Did she indicate to her what she had been told would
17 happen if she didn't, as she put it, have the relationships?

18 A Throughout the interview, she mentioned several threats
19 being made to her. One was, I'm going to kill you, I'm going to kill your
20 mom, I'm going to kill your brother, I'm going to kill your whole family,
21 I'm going to take your little brothers to Honduras and you're never going
22 to see them again, I'm going to get out of jail because I'm rich and I have
23 money in Honduras, and I'll come out and I'll kill all of you.

24 Q All right. Now, was there also a conversation during that
25 incident that she described where he kissed her about her being kicked

1 out of the home?

2 A Yes. He stated that, as well. That he would kick her out of
3 the house if she didn't comply with him.

4 Q And was part of that also a comment on the fact that she did
5 not work?

6 A correct.

7 Q What did she tell you about her not working?

8 A He stated something -- in verbatim, you know, I'm not going
9 to give verbatim because I don't recall the specific word she used, but
10 she stated that he would tell her, everybody in this household works
11 except you, so something about you're useless or it's of no use because
12 you don't work, and she explained to him, you know, I'm young, I can't
13 go out and work.

14 Q Did she indicate to you what it was that she had done after
15 he had forcefully kissed her the day prior to the interview?

16 A She stated that she told her mother and she said she told
17 because she was afraid that the next day, he was going to have
18 relationships with her as he had stated to her. And I'm using her terms.
19 Relationships is something she described.

20 Q Did she also talk to you about an incident that she had said
21 happened in August of last year? So August of the year before the
22 interview?

23 A Okay. August 2015; yes, she did.

24 Q Okay. What did she tell you about that incident that
25 happened in August of 2015?

1 A She stated that's when things started to happen. She
2 described that she was in the living room sitting on the couch with her
3 stepdad. They were watching Planet of the Apes. She had had some
4 kind of surgery at the time. I didn't know what kind of surgery she had,
5 but he then used that as an excuse, according to her, to check her
6 wounds. And that he played with her zipper, eventually put his hand
7 underneath her pants, underneath her underwear, and used his palm to
8 touch her [foreign language spoken], which she called private part, and
9 later vagina. And she stated that he used the palm of his hand to touch
10 it, that he moved it as if he was wiping a window, and that it felt ticklish,
11 and that it was disgusting to her.

12 Q Did she also talk to you about another incident that she
13 indicated had happened in the home? Well, let me ask you a way better
14 question than that. Did she talk to you about an incident that she said
15 had happened about the fourth week of June?

16 A Yes, she did. She said that she was in the bedroom, in
17 mom's bedroom, taking care of her baby brother, and that he grabbed
18 her, threw her on the bed, pulled her shorts down, her underwear down,
19 and that he kissed her private part with his mouth and his tongue. She
20 described that his tongue went in the part where the period comes out
21 of. And then he proceeded to use his index finger to put it in her vagina,
22 or private part.

23 She would use both words. And that it stung and that it hurt. And
24 then he proceeded to pull down his pants and underwear down, but he
25 stopped when the baby started crying, and she stated that what saved

1 her was her baby crying -- the baby brother crying.

2 Q Okay. Fair to say that those are all of the incidents of sexual
3 contact that she described to you?

4 A Yes; however, she talked about numerous times -- she said
5 more than one time where he would tell her, we're going to have
6 relationships, you have to have relationships with me, if not, this is going
7 to happen and that's going to happen.

8 Q Okay. So those were comments that were made to her
9 where there was no action that went along with it?

10 A Yes, from what I understood.

11 Q Okay. Did she talk to you about one of those that took place
12 in February of 2016?

13 A Yes.

14 Q What did she say about the conversation in February of
15 2016?

16 A She stated he told her when mom was in the hospital after
17 she delivered, that she and -- that he was going to have relationships
18 with her and she stated no, and that he proceeded with threats.

19 Q Did she indicate that that was a topic of conversation that
20 had come up more than just that one time?

21 A Yes.

22 Q Okay, all right. And then after you interviewed Meily, did
23 you, in fact, interview Jose?

24 A Yes, I did.

25 Q Okay. What was Jose's demeanor as you interviewed Jose?

1 A Jose's was nervous. His voice was shaking. At one point, he
2 started crying and expressed fear, and stated that stuff happened to his
3 sister, and that the stepfather had made several threats to the family,
4 and he was concerned that he was going to hurt his family.

5 Q Now, let me make sure I get to the right page. Bear with me
6 one second. During the course of your interview with Jose, did he
7 indicate to you why it was that his mom had called the police?

8 A Because Meily had told her that her stepdad --

9 MS. MACHNICH: Objection, Your Honor. I believe we lack
10 foundation, and we lack some personal knowledge as to the second level
11 of hearsay.

12 THE COURT: I'm going to sustain the objection.

13 MS. MACHNICH: Thank you.

14 MS. SUDANO: All right.

15 MS. MACHNICH: Move to strike.

16 THE COURT: I didn't think she answered, but yes, the jury is
17 instructed to disregard.

18 MS. SUDANO: Okay.

19 BY MS. SUDANO:

20 Q So you indicated that you conducted your interview with
21 Jose?

22 A Yes.

23 Q And you had information at that point that there was some
24 agency that was making the referral to have the children interviewed?

25 A Yes.

1 Q And I believe you indicated earlier that, to your knowledge,
2 there was a detective in the other room watching, so the police were
3 involved; is that fair?

4 A Yes.

5 Q Okay. And you indicated that you had some small portion of
6 -- or some vague description of the allegations that had been made; is
7 that correct?

8 A Yes.

9 Q Okay. During the course of your interview with Jose, did he
10 indicate to you how it was that the police had been contacted?

11 A He said that his mom contacted the police because --

12 MS. MACHNICH: Objection. Your Honor, foundation.

13 THE COURT: Sustained.

14 MS. MACHNICH: Thank you.

15 MS. SUDANO: Your Honor, can we approach?

16 THE COURT: Yes.

17 [Sidebar begins at 4:23 p.m.]

18 THE COURT: The objection is hearsay. Go on.

19 MS. SUDANO: And Your Honor, this is a statement that we
20 tried to elicit from Jose earlier. He denied making the statement. He
21 denied knowing why it was that his mother had called the police, and so
22 we're, at this point, entitled to bring in the statement through this
23 witness for purposes of impeachment.

24 MS. MACHNICH: The problem is, Your Honor, that he wasn't
25 there when his mom called the police, and so he lacked personal

1 knowledge to say that to start with, unless he learned it from another
2 third-party, which is so many levels of hearsay, and it gets confusing.

3 THE COURT: All right. What does it say in the -- do you have
4 a recorded statement? I assume since all of her interview was recorded,
5 right?

6 MS. SUDANO: It was; yes.

7 THE COURT: All right. So what does the recording say?

8 MS. SUDANO: So I don't actually have it up here with me so
9 I can't do it verbatim, but he says that they called the police because
10 Meily had said that he was going to kick her out of the house if she didn't
11 have relations with him tomorrow. So that's the entirety of the
12 statement that we're trying to get is --

13 MS. MACHNICH: But Your Honor, it's -- he wasn't there
14 when police were called.

15 THE COURT: Well --

16 MS. MACHNICH: If someone told him that mom was calling
17 the police because some -- because Meily had told him that Gustavo had
18 said, I mean, we're --

19 THE COURT: Where's the statement? You guys are just --

20 MR. SPEED: I have it, Your Honor.

21 THE COURT: -- testifying.

22 MR. SPEED: I have it.

23 THE COURT: I don't know what it says. Get me the
24 statement. Do we need a break? All right. We're going to take a short
25 recess.

1 [Sidebar ends at 4:25 p.m.]

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

10 [Jury out at 4:26 p.m.]

11 [Outside the presence of the jury]

12 THE COURT: All right. We're outside the presence. You're
13 talking about this paragraph today? Is he taking a break? Okay.

14 "So today, when I went to work -- well, yesterday, mom told
15 me to tell her what is the name of the street where you will be working. I
16 told her because maybe the police were going to come today, but when
17 they got there, he tried to avoid the police and went to the office where
18 he got arrested."

19 Is that what you're talking about?

20 MS. SUDANO: It's at the very end of that page 14.

21 THE COURT: "She turned him in because Gustavo yesterday
22 told that today -- well, she was going to sleep with him." I don't get it.
23 What is it you're trying to get out?

24 MS. SUDANO: So he denied having that piece of
25 information and he denied saying that he was aware at the time that he

1 was going to be arrested or why it was that they were going to call the
2 police, I guess, is the better way to phrase that. So that's all we were
3 trying to get in is that he did, in fact, tell her that he was aware of the
4 allegations that had taken place before, and was aware that the family
5 was going to be calling the police.

6 MS. MACHNICH: And Your Honor, may I be heard?

7 THE COURT: Go ahead.

8 MS. MACHNICH: I just -- I'm not denying that he told Ms.
9 Espinoza that. My issue is that he -- there's no foundation for how he
10 learned that information, and it seems like him learning information from
11 someone else that was said by someone else, that was said by someone
12 else, he lacks personal knowledge. So even if we're not going to say
13 hearsay because we can come up with four different hearsay objections
14 to get there, he lacks personal knowledge and foundation for how he
15 learned any of this information.

16 And at this point, we are so deep in that and there's no
17 specificity in the statement, that we don't know how he learned that. We
18 don't know if mom told him that or if sister told him that. If mom told
19 him that, then that's not -- there's a hearsay jump in there that's now
20 allowed, so we have double and triple and quadruple hearsay going on.
21 And so it just -- it's not a proper statement to elicit. I mean, this is
22 already basically going through hearsay on hearsay on hearsay
23 statements.

24 THE COURT: This is -- as best I can understand, this is what
25 he knew. That's all they're trying to get out that he knew it. How he

1 knew it, nobody -- you're right. You don't know, but that's not the point
2 of the, if you will, rehabilitation that he knew.

3 MS. MACHNICH: But he lacked personal knowledge to have
4 that knowledge, so are they getting in --

5 THE COURT: What do you mean he --

6 MS. MACHNICH: -- the truth of the matter asserted or are
7 they --

8 THE COURT: -- lacks personal knowledge?

9 MS. MACHNICH: Like he doesn't know how -- he didn't get
10 that information directly from a solid source. He got that information
11 from somebody.

12 THE COURT: Well --

13 MS. MACHNICH: I mean --

14 THE COURT: -- that's argument.

15 MS. MACHNICH: But it's hearsay.

16 THE COURT: This is -- no, we don't know, but we know he
17 knows, and that's all they're trying to get out is that --

18 MS. MACHNICH: I guess relevance then.

19 THE COURT: -- he knew that.

20 MS. MACHNICH: I guess I would then object to relevance. It
21 doesn't matter if he knew. By the time he got to the Children's Advocacy
22 Center, he knew the police had been called, and he knew they were
23 calling the police that day because he was told and then picked up by
24 police. I mean, at this point, we're now a couple steps outside of there,
25 and we don't know when he gained this knowledge, how he gained this

1 knowledge, why he gained this knowledge. If he gained it from mom,
2 it's hearsay. If he gained it from being present during the execution of
3 police doing the things they did, then that would be direct. We don't
4 know because this is a statement, and he was on the stand. And so it
5 doesn't really matter what he knew --

6 THE COURT: He was on the stand and my recollection is yes,
7 he didn't remember that -- exactly what they want to get out, and this
8 says he knew. It doesn't say how he knew. You're right, but the only
9 point is that he knew. That's all I can -- if you want to -- anyway, I'm
10 allowing it.

11 MS. SUDANO: Thank you, Your Honor.

12 THE COURT: I don't see that hearsay is an issue regarding --
13 it's basically the same thing as state of mind. He knew. How he knew is
14 something -- a whole different issue.

15 MS. MACHNICH: Right.

16 THE COURT: So I'm allowing it.

17 MS. MACHNICH: Okay.

18 THE COURT: All right. Anything else?

19 MS. MACHNICH: Not at this point; thank you.

20 MS. SUDANO: Thank you, Your Honor.

21 MS. DIGIACOMO: Do we have time to use the restroom or
22 no?

23 THE COURT: Yeah, go ahead. With let's say an hour left,
24 who else is -- just this?

25 MS. DIGIACOMO: Just her. She's leaving town tomorrow.

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GUSTAVO GUNERA-PASTRANA,) No. 79861
)
 Appellant,)
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 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

DARIN IMLAY Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610 Attorney for Appellant	STEVE WOLFSON Clark County District Attorney 200 Lewis Avenue, 3 rd Floor Las Vegas, Nevada 89155 AARON FORD Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538 Counsel for 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:

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

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office