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IN THE SUPREME COURT OF THE STATE OF NEVADA

ARMANDO VASQUEZ-REYES,)	No. 80293	
)		Electronically Filed
Appellant,)		Aug 27 2020 11:26 a.m.
)		Elizabeth A. Brown
v.)		Clerk of Supreme Court
)		
THE STATE OF NEVADA,)		
)		
Respondent.)		
_____)		

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1 MR. FELICIANO: I'm allowed to make different
2 arguments.

3 THE COURT: It's a wellness checkup for -- I mean,
4 that's the only way it would get to this doctor. I mean --

5 MR. ROWLES: I know, but --

6 THE COURT: This is --

7 MR. ROWLES: Suicide is a natural response to that,
8 yeah.

9 THE COURT: -- you can call it wellness, but it's
10 still as a result of a sexual assault disclosure.

11 MR. ROWLES: Okay.

12 THE COURT: It's not going right to the
13 pediatrician. I mean, and so the Supreme Court has said
14 those are not for the purposes of a medical diagnosis.

15 MR. ROWLES: Okay.

16 THE COURT: Okay.

17 (Bench conference concluded).

18 (Pause in the proceedings)

19 BY MR. ROWLES:

20 Q Doctor, can you hear me?

21 A Yes, I can.

22 Q Okay. Prior to meeting with Guadalupe, was she
23 seen by other employees of Sunrise Hospital?

24 A Yes, she was seen by the nursing staff.

25 Q Okay. Did you have the opportunity to review the

1 nursing staff's documents and records in assessing and making
2 your treatment plan?

3 A Yes, it's an essential part of the treatment plan,
4 that's all the kind of build-up and assessments on the way
5 into the examination.

6 Q Okay. And as result of your interaction with
7 Guadalupe and your review of the reports from the nurses
8 here, you thought she would be -- or it is important to
9 report her for suicidal ideations?

10 MR. FELICIANO: Objection. Leading.

11 THE COURT: You are -- you are leading.

12 MR. ROWLES: I understand.

13 THE COURT: Sustained.

14 BY MR. ROWLES:

15 Q Based on your review or conversation with Guadalupe
16 and your review of the records here, did you think that it
17 was -- or what steps did you take?

18 A I gave her discharge instructions for suicidal
19 ideations as well as for sexual assault with information
20 regarding both, and then sent her to the CAC where we set up
21 an appointment.

22 Q Okay. Did you also meet with her again on April
23 21st at the CAC?

24 A Yes, I did.

25 Q Is can you describe your interaction with Guadalupe

1 on that date to the members of the jury?

2 A So it's a lot like what I described. So she came
3 in with a parent, and then that parent would basically kind
4 of go through some of similar information as in the emergency
5 department, however, with more detail. We ask her questions
6 about school. We ask them about how they're doing,
7 otherwise, anybody medications they're on, allergies, and so
8 on. Checked their vital signs.

9 So it's the same thing that we did with her. And
10 then additionally, I performed a genital examination and took
11 sample swabs for infection testing in addition to talking to
12 her parents afterwards privately and answering any of her
13 questions and explaining the examination again.

14 Q Okay. What things of note did you observe when
15 doing her genital examination?

16 A So again, generally she had a normal exam with some
17 discharge. She had a bit of an odor. She is -- she's obese
18 and had some different colors on her skin that kind of went
19 along more with obesity, and those were the major findings.
20 It was just that she had a normal genital exam.

21 Q Did you also have the opportunity to examine her
22 anal area?

23 A Yes, I did.

24 Q Okay. Did you see anything of note during that
25 examination?

1 A No, again, a normal exam.

2 Q Doctor, can you talk a little bit to the members of
3 the jury about the female biology?

4 A Sure. So there's -- so a lot of times there's
5 misconceptions about the female genital anatomy, so the
6 vagina, the skin that surrounds it.

7 Oftentimes, when I look at the exam, not just
8 myself, but other colleagues, we will part the kind of outer
9 lips, which are the labia majora to be able to see more of
10 the internal structures. One of those structures is the
11 vagina.

12 And around the vagina opening there's a collar of
13 skin. It's the same kind of skin we have inside of our
14 mouths, for instance where it's stretchy and then it's
15 softer.

16 And so that area is called the hymen. Oftentimes,
17 there's a misconception that the hymen is some type structure
18 or a wall covering the actual vaginal opening. However, it's
19 just skin that's around that.

20 Above that we usually see the clitoris, which is
21 covered in the smaller lips and that's the kind of essential
22 area that is being checked and looked for for any signs of
23 infections or any abnormality.

24 Q You referenced the hymen. As an individual gets
25 older and develops, does the hymen change?

1 A Yes, absolutely. So the first couple of years
2 after birth the female child will still have some estrogen
3 from mom inside the body and so that makes that little collar
4 around a little bit thicker and a less sensitive. And then
5 as the child loses that estrogen and goes from that point
6 until they start making their own in puberty, it will be a
7 little bit thinner looking and it's shinier, and then after
8 that, once a female starts making her own estrogen, so just a
9 basic female hormone, it starts getting thicker, the skin
10 starts folding on itself and gets more floppy and stretchy.

11 Q Okay. Doctor, in your line of work and your
12 experience, are you familiar with the concept that normal is
13 normal?

14 MR. FELICIANO: Objection. Leading.

15 THE WITNESS: Yes.

16 MR. FELICIANO: And confusing.

17 MR. ROWLES: I think it's foundational.

18 THE COURT: You are -- right -- you are leading.
19 Try not to lead this witness.

20 MR. ROWLES: Okay. Okay.

21 BY MR. ROWLES:

22 Q In your line of work regarding the hymen in sexual
23 assault examinations, is there a term that is used to discuss
24 that?

25 A So in about 90, 95 percent or so of exams whether

1 it's acute or not acute, like at the CAC, most of them are
2 normal exams, just due to the nature of the type of area that
3 it is, the healing process, the type of contact that
4 occurred. And so Dr. Joyce Adams had initially coined the
5 term it's normal to be normal.

6 Just basically to explain that these exams normally
7 are normal and normal does not rule out any type of
8 inappropriate sexual contact.

9 Q And you referenced a number 95 percent. What do
10 you mean by that number?

11 A So when a child, either someone's concerned about
12 sexual abuse, they say something about sexual abuse, but they
13 come in for an examination at an ER or CAC or something of
14 that nature to have an exam specifically for those reasons or
15 concerns, about 90 to 95 percent of the time those exams
16 completely normal.

17 Q And so what -- why -- what properties of that area
18 allow for this to happen?

19 A Sure. So there's like in the mouth if we injure
20 ourselves, there's a lot of blood vessels and nerve endings.
21 Although, it's a sensitive area, it also heals really
22 quickly, and it's also made to stretch. And both the anus
23 and the vaginal tissue, the skin's fairly stretchy, and it
24 can heal very well, very quickly, so oftentimes injuries or
25 anything of that nature are not seen.

1 Q You indicated heal quickly. Is there, in your
2 experience, is there a time in which healing occurs?

3 A It depends on the type of injury. Anything from a
4 kid falls off their bike or otherwise, there's many different
5 injuries that we do see in the genital area and will often be
6 followed up. So sometimes within days to weeks if it's a
7 more serious injury that needs, for instance, sutures or
8 something like that.

9 Q Okay. Now, we discussed the vaginal area and the
10 properties of that. Is that similar to the anus?

11 A Yeah, I mean, even more so. I mean, everybody goes
12 to the bathroom and has a bowel movement, and so that area is
13 meant to be accommodating and to be able to stretch open and
14 then close back up, so same kind of principles, there's a lot
15 of blood vessels that run there, so it heals very quickly.

16 MR. ROWLES: Court's brief indulgence.

17 BY MR. ROWLES:

18 Q So we talked a little bit about how quickly those
19 two areas can heal. In your training and experience and in
20 your line of work, would you expect findings if the last
21 incident occurred several months prior?

22 A Oh, absolutely not. Scar tissues are also not very
23 apparent in the areas. It doesn't seem -- by the naked eye,
24 for instance, same -- like I said, same in the mouth, it's a
25 very similar kind of skin. So no, after months of any kind

1 of contact, if there was an injury, no, I definitely wouldn't
2 expect to see anything.

3 MR. ROWLES: Court's brief indulgence.

4 BY MR. ROWLES:

5 Q Doctor, it's fair to say that you've been employed
6 as a pediatrician for a number of years now; is that correct?

7 A Yes.

8 Q In your training and experience, if an individual
9 sought out medical treatment for constipation, would that
10 exam be as thorough as the exam that you performed at the
11 CAC?

12 MR. FELICIANO: I'm going to object to relevance,
13 and this has nothing to do with what this witness is
14 testifying about.

15 THE COURT: Overruled.

16 MR. ROWLES: May we approach?

17 THE COURT: She can answer.

18 BY MR. ROWLES:

19 Q You can answer, Doctor. Would that exam be as
20 thorough as the exam that you performed at the CAC?

21 A No, not at all.

22 MR. FELICIANO: And again, objection. Speculation.
23 He's asking if an exam would be more thorough. There's no
24 way this witness could know.

25 THE COURT: Okay. Overruled. She can answer.

1 BY MR. ROWLES:

2 Q I apologize, Doctor, what was that answer?

3 A No, no, there wouldn't. Usually constipation's
4 more of a -- a history gathering, and if there are complaints
5 of bleeding or anything like that, it might be at a quick --
6 a check, but nothing to that extent, no.

7 MR. ROWLES: Thank you, Doctor.

8 THE COURT: Thank you.

9 MR. FELICIANO: Thank you.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. FELICIANO:

13 Q Good afternoon, Doctor.

14 A Good afternoon.

15 Q So it sounds like you do -- well, it sounds like
16 you do a general exam that, I guess, you kind of do in every
17 sort of case, kind of general factors that you look at,
18 things you look at; is that right?

19 Like is there a base --

20 A Yeah, I mean -- um-h'm.

21 Q So there's certain things that you do in every
22 exam; is that right?

23 A Yes.

24 Q Okay. And do you also --

25 A Yeah, pretty much.

1 Q -- take -- do you also take the feedback from

2 whoever you're examining and based on what they say, do you

3 do further examination; is that fair?

4 A To some extent. I always look at the genitals and

5 the anus area. On occasion the lab tests that are run are

6 different based on feedback. But more often than not it's

7 very standardized.

8 Q Okay. And in this case, you said it was a normal

9 exam, right?

10 A Yes.

11 Q Okay. There were no injuries to the vagina?

12 A Correct.

13 Q None to the anus?

14 A Correct.

15 Q And you saw no -- or you noted no type of cuts on

16 Guadalupe's body, right?

17 A Correct.

18 MR. FELICIANO: Court's indulgence. Thank you.

19 We'll pass the witness.

20 THE COURT: Thank you. Any redirect?

21 MR. ROWLES: No, Your Honor. Thank you, Doctor.

22 THE COURT: Okay. Thank you very much for your

23 testimony today, Doctor. Thank you, and I think we're going

24 to sign off. Have a good day.

25 THE WITNESS: All right. Thank you.

1 Sorry about the drama. Thank you.

2 THE COURT: No, no problem. I'm assuming that was
3 our last witness?

4 MR. SWEETIN: I believe so, Judge.

5 THE COURT: Yes?

6 MR. ROWLES: Yes.

7 THE COURT: Okay. And can the parties start at
8 9:00 o'clock on Monday?

9 MR. FELICIANO: Yes.

10 THE COURT: Okay. All right. We're going to be in
11 recess until Monday morning at 9:00 o'clock.

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

21 Thank you very much. Have a good weekend, and
22 we'll see you Monday.

23 THE MARSHAL: Thank you. All rise for the exiting
24 jury, please.

25 (Outside the presence of the jury.)

1 THE COURT: Am I going to get jury instructions?
2 Pam says she's been torturing you guys for instructions, and
3 I don't have them yet.
4 MS. HOJJAT: Monday?
5 MR. FELICIANO: Monday?
6 THE COURT: Well, since I probably will be
7 instructing them Monday, I hope I get them at least by
8 Monday.
9 MS. HOJJAT: Well, actually, what's the schedule on
10 that?
11 MR. FELICIANO: Yeah, so for scheduling.
12 MS. HOJJAT: Are we closing on Monday or Tuesday?
13 THE COURT: Well, I really want to --
14 MR. ROWLES: I mean, your last witness can't
15 testify until 3:00, right?
16 THE COURT: -- start my next trial on Tuesday, so
17 I'm hopeful that we'll be done.
18 MS. HOJJAT: Okay.
19 MR. FELICIANO: Well -- okay. So we're -- I don't
20 know in the State's resting or not. We're just figuring out
21 what --
22 MS. HOJJAT: Yeah.
23 MR. FELICIANO: -- for scheduling purposes.
24 THE COURT: Okay.
25 MS. HOJJAT: You guys are resting Monday morning?

1 MR. SWEETIN: Yes, we are.

2 MR. ROWLES: Yes, but yeah.

3 MR. SWEETIN: And we do have -- we do have jury
4 instructions, we --

5 THE COURT: Okay.

6 MR. SWEETIN: -- I talked to your secretary and I
7 told her there might be some additional, so we can send over
8 what we have now --

9 THE COURT: Okay.

10 MR. SWEETIN: -- depending on what the defense does
11 in their case, we might have some additional ones.

12 THE COURT: Sure.

13 MR. SWEETIN: Okay.

14 THE COURT: And if you guys have some special --
15 well, whatever instructions you want to propose --

16 MR. FELICIANO: Okay.

17 THE COURT: -- if you'll make sure Pam gets them.

18 MS. HOJJAT: Right. And our -- as the State's --
19 or as the Court's aware, we're not required to disclose our
20 instructions until after the State has rested. So we'll send
21 them to chambers, and we just ask that they not be sent over
22 to the State until the State has rested.

23 MR. ROWLES: What rule is that?

24 THE COURT: Did you -- what?

25 MS. HOJJAT: Because specials. Theories of the

1 case, we're technically not required to disclose our theory
2 of the case until after --

3 THE COURT: Okay.

4 MS. HOJJAT: -- the State has rested.

5 THE COURT: But, yeah, I want both sides to --

6 MS. HOJJAT: Yes.

7 THE COURT: -- be able to know what instructions
8 you're -- I never heard of withhold them from somebody.

9 MS. HOJJAT: I -- I -- it's --

10 THE COURT: But, I agree. I mean, I'd certainly
11 like to get instructions as soon as I can but --

12 MS. HOJJAT: Right. And we'll -- we'll have them
13 to the Court Monday, and we just ask -- we'll send them to
14 the State as soon as they rest.

15 THE COURT: Okay. Am I missing something or did
16 Mr. Sweetin say he's resting?

17 MS. HOJJAT: They didn't rest in front of the jury.

18 MR. SWEETIN: We are resting, Judge, on Monday.

19 THE COURT: And that's what I thought.

20 MS. HOJJAT: Perfect.

21 THE COURT: Okay. I just wanted to make sure.

22 MS. HOJJAT: Thank you. And then --

23 MR. ROWLES: So will we have those instructions
24 before Monday?

25 MS. HOJJAT: As soon as you guys rest you'll have

1 them, yes.

2 MR. ROWLES: See I -- that -- this is a trial by
3 ambush type situation here, Your Honor.

4 THE COURT: I never heard of that.

5 MR. ROWLES: Okay.

6 THE COURT: Court I never heard of that. I never
7 heard I'm going to give the instructions to the Court but
8 don't disclose them to anybody. I've never in all my years
9 have I ever been told that by anybody.

10 MS. HOJJAT: It's because we are not required to
11 disclose our theory of the case to the State until they've
12 rested. And so if there's any specials that we believe could
13 go to our theory of the case, we are entitled to keep those
14 until the State has rested.

15 MR. ROWLES: What case law and what rule.

16 MS. HOJJAT: It's by --

17 THE COURT: Where did -- I'm just wondering. You
18 know, I like to get instructions as soon as I can. Where is
19 that rule? Where is that --

20 MS. HOJJAT: It's the rule the reason that we're
21 allowed to reserve opening until after the State has rested
22 their case.

23 THE COURT: Okay. So there is none?

24 MS. HOJJAT: Well, I mean, it is literally the
25 reason that we are allowed to reserve our opening until after

1 the State has rested. We are not required to disclose our
2 theory of the case until the State has rested
3 constitutionally.

4 THE COURT: Well, yeah, when in doubt, just cite
5 the Constitution. How many witnesses do you all have on
6 Monday?

7 MR. FELICIANO: We have -- well, we have
8 Dr. Harder.

9 THE COURT: Oh, that's right. He won't testify --

10 MR. FELICIANO: But --

11 THE COURT: -- until --

12

13 MR. ROWLES: That's right.

14 MR. FELICIANO: And I'm guessing there's going to
15 -- there may be rebuttal after him, and there -- so I'm
16 guessing, I don't know for sure, but they have about ten
17 doctors noticed, so --

18 MR. SWEETIN: Well, yeah, and we're not going to
19 call ten doctors, but there is going to be probably, I don't
20 know what Dr. Harder's going to say, but I'm guessing that
21 we're going to have one, maybe two witnesses in rebuttal.

22 MR. FELICIANO: So I don't -- if he's on at 2:45, I
23 believe, I think it's -- I don't think it's realistic that
24 we're going to close on Monday.

25 THE COURT: Well, I don't know. I really need to

1 start my next one --

2 MR. FELICIANO: Understood.

3 THE COURT: -- because they thought -- I mean, what

4 -- what -- you can only do what you can do, right?

5 MR. FELICIANO: Yeah, so we'll -- I mean, we will

6 have --

7 THE COURT: We can only do what we can do.

8 MR. FELICIANO: We'll have everybody except for

9 Harder ready to go at 9:00, and we'll fill time until we're

10 out of witnesses, and go from there, I guess.

11 THE COURT: How many witnesses do you have?

12 MR. FELICIANO: At least one, maybe up to three and

13 then Harder. Pretty short, though.

14 THE COURT: Okay. So we're going to -- I need to

15 anticipate a big gap in the middle of the day?

16 MR. FELICIANO: I don't know. I mean, it's -- it

17 all depends on -- it all depends on our preparation of one of

18 our witnesses and how -- if that witness is going to testify

19 and how long they're going to testify.

20 THE COURT: Okay. Okay. All right.

21 MR. FELICIANO: I guess, I'm not really --

22 THE COURT: Well, I mean, that's always a

23 possibility.

24 MR. FELICIANO: Yes, so --

25 THE COURT: I mean --

1 MR. FELICIANO: -- I mean, I guess we'll see --
2 we'll see Monday.
3 THE COURT: Okay.
4 MR. FELICIANO: And --
5 THE COURT: Well, sure, you're just going to make
6 the decision --
7 MR. FELICIANO: Yes.
8 THE COURT: -- after preparing, obviously?
9 MR. FELICIANO: Yes.
10 THE COURT: Okay. So --
11 MR. FELICIANO: So we hope not, but there may be a
12 little gap.
13 THE COURT: Okay. And Harder won't do anything
14 before 2:45?
15 MR. FELICIANO: No. He said he -- I think he's out
16 of state now. I talked to him today. He was driving, I
17 think, to Arizona. I was talking to him on -- on his cell,
18 and --
19 THE COURT: Okay.
20 MR. FELICIANO: -- we -- that's the best I could
21 do.
22 THE COURT: Okay. Thank you.
23 MR. FELICIANO: Thank you.
24 MS. HOJJAT: Thank you.
25 (Court recessed at 3:57 P.M., until Monday,
26 October 14, 2019, at 9:14 A.M.)

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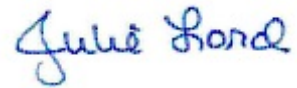
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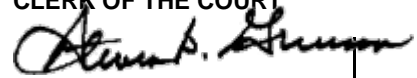
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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.



JULIE LORD, TRANSCRIBER
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	CASE NO. C-16-316382-1
)	
Plaintiff,)	DEPT. NO. XII
v.)	
)	
ARMANDO VASQUEZ-REYES,)	
a/k/a ARMANDO VASQUIEZREYES,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

MONDAY, OCTOBER 14, 2019

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 6

APPEARANCES:

FOR THE STATE:	JAMES R. SWEETIN, ESQ. Chief Deputy District Attorney
	WILLIAM C. ROWLES, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	MIKE FELICIANO, ESQ. NADIA HOJJAT, ESQ. Deputy Public Defenders

ALSO PRESENT:

BETTE BROOKS
MARIA PETERS
MARIA PERALTA de GOMEZ
Spanish Interpreters

RECORDED BY: KRISTINE SANTI, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 14, 2019

2 (Case called at 9:14 a.m.)

3 (Outside the presence of the jury)

4 THE COURT: Good morning. Do we have a full panel?
5 Can we bring the panel in?

6 MR. FELICIANO: Just briefly. So we have -- as far
7 as scheduling goes, we have Mr. Duke available to testify and
8 then rather than having our investigator testify about the
9 square footage of one of the homes, the State has agreed to
10 stipulate --

11 THE COURT: Okay.

12 MR. FELICIANO: -- to square footage, so we're going
13 to put that on the record. There's also a stipulation we
14 talked about last week where Detective Pretti told
15 Mr. Vasquez-Reyes if he needed -- they would call EMT for him
16 if we needed assistance.

17 Well, what was translated to him in Spanish is that
18 they would call an ambulance for him, if he requested it.

19 THE COURT: Okay.

20 MR. FELICIANO: Other than that, then I think maybe
21 we'd want to have the jury exit and then canvass
22 Mr. Vasquez-Reyes on his right to testify. Is that good?

23 THE COURT: Sure.

24 MR. FELICIANO: Other than that, we're good.

25 THE COURT: Okay.

1 MR. SWEETIN: As for as the stipulation, is the
2 Court kind of put them on the record or is defense counsel or
3 how are we going do that?

4 THE COURT: Right. Yeah. If you want to write them
5 out, I'm happy to read them to the jury panel or one side or
6 the other can state the stipulation, and the other side can
7 agree. It's up -- it's up to you all.

8 MR. FELICIANO: I can state it, if they don't mind
9 -- I can state it just like I just stated it. That's fine.

10 MR. SWEETIN: If it's a stipulation, we'd rather
11 have the Court read it, if that's --

12 THE COURT: That's fine.

13 MR. SWEETIN: -- that's possible.

14 MR. FELICIANO: Okay. So --

15 THE COURT: Do you just want to write them out,
16 Mr. Feliciano?

17 MR. FELICIANO: I'll write it out, and maybe we'll
18 approach before --

19 THE COURT: Perfect.

20 MR. FELICIANO: Okay.

21 THE COURT: Okay.

22 MR. ROWLES: And we still have to rest officially,
23 right?

24 MR. FELICIANO: Oh.

25 MR. ROWLES: Yeah.

1 THE COURT: Are you going to rest first --
2 MR. SWEETIN: We are.
3 THE COURT: -- thing this morning?
4 MR. ROWLES: Yes.
5 MR. SWEETIN: Yes.
6 THE COURT: Okay. You can bring them in.
7 (Pause in the proceedings)
8 THE MARSHAL: All rise for the entering jury,
9 please.
10 (In the presence of the jury.)
11 THE MARSHAL: Jurors, you can go ahead and have a
12 seat once you get to your chairs. They're standing for you.
13 THE COURT: Does the State stipulate to the
14 presence of our jury panel?
15 MR. SWEETIN: Yes, Your Honor.
16 THE COURT: The defense?
17 MR. FELICIANO: Yes, Your Honor.
18 THE COURT: Okay. Does the defense have -- I'm
19 sorry, does the State have any further witnesses that they
20 intend to call in this matter?
21 MR. SWEETIN: We do not, Judge. I would note that
22 I believe all of the evidence with the exception of the
23 transcript of the -- from the statement has been admitted
24 into evidence.

1 THE CLERK: It says that that's -- Number 4 is moved
2 to Court's exhibit, the transcript.

3 MR. ROWLES: That's the transcript.

4 MR. SWEETIN: I believe that that's -- that's
5 correct. So I believe 1, 2, 3, and 5 have been admitted into
6 evidence. Would that be correct?

7 THE COURT: Okay. Well, let's make sure before
8 they rest.

9 MR. SWEETIN: Thank you.

10 THE COURT: Have 1 through 5 been admitted, with
11 the exception of 4?

12 THE CLERK: It shows that on the list but it doesn't
13 have a sticker on it so [inaudible].

14 THE COURT: What -- what one was that?

15 THE CLERK: Number 3, the CD. Is that admitted?

16 (Court/Clerk conferring)

17 THE COURT: So, 3 is admitted. With that, does the
18 State rest?

19 MR. SWEETIN: The State does rest, Your Honor.

20 THE COURT: Okay. Mr. Feliciano, you may call your
21 first witness?

22 MR. FELICIANO: And we call James Duke.

23 JAMES DUKE, DEFENDANT'S WITNESS, SWORN

24 THE CLERK: Thank you. You may be seated.

25 And would you please state and spell your name?

1 THE WITNESS: James Duke, J-a-m-e-s, D-u-k-e.

2 THE CLERK: Thank you.

3 THE COURT: You may proceed.

4 MR. FELICIANO: Thank you.

5 DIRECT EXAMINATION

6 BY MR. FELICIANO:

7 Q Good morning, Mr. Duke.

8 A Good morning.

9 Q Are you employed?

10 A Yes, I am.

11 Q How are you employed?

12 A Currently working as an EMT with Amazon.

13 Q Okay.

14 A Yes.

15 Q So how long have you had that job?

16 A I've been there for about a month, so I was
17 previously employed at the Clark County Detention Center.

18 Q Okay. And when were you employed at the Clark
19 County Detention Center?

20 A From 2015 up until about two months ago.

21 Q And is there a certain company you work for --

22 A It was --

23 Q -- with the Clark County Detention Center?

24 A -- NaphCare and then after that Wellpath after they
25 took over earlier this year.

1 Q And what was your job while you were employed at the
2 Clark County Detention Center?

3 A I functioned as an EMT there, so I was doing intake,
4 triage, and blood draws for DUIs, that type of thing.

5 Q What type of training -- did you receive any special
6 training for that type of work?

7 A Yes, I was trained as an EMT through the Medic West
8 Science Center back in 2010, 2011.

9 Q And how long was that training?

10 A About a year.

11 Q Okay. So on April -- turning your attention to
12 April 16th of 2016 --

13 A Okay.

14 Q -- do you know if you worked that day?

15 A I couldn't necessarily say without looking at a
16 calendar, but --

17 Q Okay. Were you working for NaphCare on that day?

18 A Yes, I was.

19 Q Okay. And while you were working for NaphCare at
20 CCDC, how many people -- how often would you see patients?

21 A Anywhere from 50 to 90 people on a single shift.

22 Q Okay. So thousands, probably?

23 A Tens of thousands per year easily.

24 Q Okay. So specifically on April 16th, do you know if
25 you cared for a person named Armando Vasquez-Reyes?

1 A Not to my specific recollection, no.

2 Q Okay. So do you keep records as part of employment
3 at NaphCare?

4 A NaphCare would, yeah.

5 Q Okay. So if I showed you a NaphCare record --

6 A Um-h'm.

7 Q -- would it refresh your recollection as to whether
8 you may have performed some services for Mr. Vasquez-Reyes?

9 A If my name is on it, then, yes that would probably
10 be it.

11 MR. FELICIANO: May I approach?

12 THE COURT: You may.

13 BY MR. FELICIANO:

14 Q Okay. If you could just maybe read, just kind of go
15 through these documents and let me --

16 A Okay.

17 Q -- know when you're done.

18 A Okay. Okay.

19 MR. FELICIANO: May I approach?

20 THE COURT: You may.

21 BY MR. FELICIANO:

22 Q Sir, was this -- is this -- was this document
23 generated on or about October 16, 2016?

24 A Yeah, that's what the date says.

25 Q Do you have any reason to think it's inaccurate?

1 A No.

2 Q Okay. So what kind of services did you provide for
3 Mr. Vasquez-Reyes on that day?

4 A Mostly, I did vital sign check and a brief medical
5 history, like a triage report --

6 Q Okay.

7 A -- to give to the nurses who would be providing for
8 the care for him down the line.

9 Q So is blood pressure, is that a vital sign?

10 A Yes, it is.

11 Q So did you perform a test of Mr. Vasquez-Reyes's
12 blood pressure on that day?

13 A Yes, I did.

14 Q And what was -- what was his blood pressure?

15 A I believe, by looking at that, it was 180 something
16 over 116.

17 Q Is that a normal reading?

18 A It's elevated.

19 Q Okay. Based on that reading, is that something
20 where a patient would be referred for further care?

21 A Yes.

22 MR. FELICIANO: Court's indulgence. Thank you.
23 We'll pass the witness.

24 THE COURT: Thank you. Any cross?

25 MR. ROWLES: Yes, Your Honor. Thank you.

1 CROSS-EXAMINATION

2 BY MR. ROWLES:

3 Q Sir, you'll agree with me that when you -- an
4 individual first come into the Clark County Detention Center,
5 it's important to gauge their physical and mental health; is
6 that correct?

7 A Absolutely.

8 Q And no order to do that, it's important to interact
9 with the individual?

10 A Yes.

11 Q Okay. It's important to observe the individual?

12 A Of course.

13 Q Important to respond to the individual?

14 A Yes.

15 Q Okay. I know you don't have any specific memory,
16 but do you have any reason to dispute that you did not do
17 those things on April 16, 2016?

18 A No.

19 Q Okay. So I want to talk a little bit about the
20 observations that you made.

21 A Okay.

22 Q On April 16, 2016, you didn't observe that the
23 defendant was unconscious?

24 A No, I did not.

25 Q You didn't observe that the defendant was

1 hallucinating?

2 A No.

3 Q You didn't observe that the defendant was

4 delusional?

5 A No.

6 Q You didn't observe that the defendant was

7 nonsensical?

8 A No.

9 Q You didn't observe that the defendant was

10 unresponsive?

11 A Nope.

12 Q You didn't observe that the defendant was confused?

13 A No.

14 Q You didn't observe that the defendant had an altered

15 mental status; is that correct?

16 A No, I did not.

17 Q Okay. He didn't have any slurred speech?

18 A Not to my remembrance, sir.

19 Q Would you have marked that on your report if he did?

20 A Yes.

21 Q Did you mark that?

22 A No.

23 Q He wasn't anxious?

24 A Anxious is a I believe, kind of vague term, but --

25 Q Did you mark that on your report?

1 A I did not.

2 Q You didn't mark that he was sweating; is that
3 correct?

4 A No.

5 Q You didn't mark that he was hyperventilating?

6 A No.

7 Q Okay. You did not indicate that he was disoriented
8 to person?

9 A No.

10 Q You did not indicate that he was disoriented to
11 place?

12 A No.

13 Q You did not mark that he was disoriented to time?

14 A No.

15 Q Okay. You did not mark that he was disoriented to
16 situation?

17 A No.

18 Q Okay.

19 A That's actually -- there is a comment down there
20 that is towards the, I want to say, the third page of that
21 where I would notate that he's A and O 4 and cooperative.

22 Q Okay.

23 A And that's exactly what that is, alerted to place,
24 time, present, alert and oriented to those four specific
25 questions. So I did, in fact, mark that.

1 Q So that's something that you observed of the
2 defendant?

3 A Yes.

4 Q Okay. Now, there were also questions regarding
5 chronic conditions. So I assume that these are
6 self-reported; is that correct?

7 A Yes. They would have had to have been.

8 Q You did indicate that there's a history of dementia?

9 A No.

10 Q You did not indicate at that there was a history of
11 CNS impairment?

12 A No.

13 Q There also conversations regarding the general
14 mental health assessment; is that correct?

15 A That's correct.

16 Q And I assume that, again, is self-reported?

17 A Yes.

18 Q During that indications or during that interaction
19 did not indicate that there was a history of mental health;
20 is that correct?

21 A That's correct.

22 Q And you did not indicate that there were signs of
23 developmental disability; is that correct?

24 A That's correct.

25 Q There was conversations regarding blood pressure.

1 Do you remember that conversation from Mr. Feliciano?

2 A Briefly.

3 Q Okay. How many blood pressures do you think you've
4 given during your course of employment with the Clark County
5 Detention Center?

6 A 50 some odd thousand I would have had to have taken.

7 Q Is it unusual for an individual who's just been
8 arrested to have had high blood pressure?

9 A Not --

10 MR. FELICIANO: Objection. Relevance and it's
11 calling for an expert opinion.

12 MR. ROWLES: I think that's he's testified to his
13 training and experience and they've made it an issue.

14 MR. FELICIANO: But that's --

15 THE COURT: Right.

16 MR. FELICIANO: That's as to the reading, not as to
17 what are the factors.

18 MR. ROWLES: I'm not asking factors. I was asking
19 for readings.

20 THE COURT: Overruled. You can answer.

21 THE WITNESS: Okay.

22 BY MR. ROWLES:

23 Q Is it unusual for an individual who's just been
24 arrested to have high blood pressure?

25 A No. I see --

1 MR. ROWLES: Nothing further, Your Honor.
2 THE WITNESS: Okay.
3 THE COURT: Any redirect?
4 MR. FELICIANO: No, thank you.
5 THE COURT: Thank you very much --
6 THE WITNESS: Okay.
7 MR. FELICIANO: -- for your testimony here today.
8 You may step down, and you are excused from your subpoena.
9 Thank you very much for being here.
10 THE WITNESS: Thank you, Your Honor.
11 MR. FELICIANO: May we approach?
12 THE COURT: Sure, of course.
13 (Bench conference begins).
14 THE COURT: Boy, that was quick.
15 MR. FELICIANO: I'm sorry?
16 THE COURT: That was quick.
17 MR. FELICIANO: So now we're asking to read the
18 stipulations.
19 THE COURT: Okay.
20 MR. FELICIANO: And then --
21 MS. HOJJAT: (Reading).
22 MR. FELICIANO: -- then excuse the jury to canvass
23 Mr. Vasquez-Reyes.
24 THE COURT: Okay.
25 MS. HOJJAT: (Reading).

1 THE COURT: Okay. And then I'll read them and then
2 I'll mark them as a court's exhibit.

3 MS. HOJJAT: They're kind of not very well written.

4 THE COURT: Well, that's why I want to just make
5 sure --

6 MS. HOJJAT: Sloppy handwriting. Sorry.

7 THE COURT: Perfect. Thank you.

8 MS. HOJJAT: Thank you.

9 MR. FELICIANO: Thank you.

10 (Bench conference concluded).

11 THE COURT: Okay. At this time, ladies and
12 gentlemen, the parties have entered into a couple of
13 stipulations, and I'm going to read them to you at this time.

14 The parties have stipulated that when
15 Mr. Vasquez-Reyes was being questioned by the detective,
16 Detective Pretti said in English that he would call an EMT if
17 he needed one, but Mr. Vasquez-Reyes was told in Spanish that
18 an ambulance would be called if he needed one.

19 The parties have also stipulated that the residence
20 at 2213 Berkley Avenue has a square footage of 1098 square
21 feet. And it will be marked as court's exhibit next in line.

22 At this time, we're going to take a recess.

23 During there recess, you're admonished not to talk
24 or converse among yourselves or with anyone else on any
25 subject connected with this trial, or read, watch or listen

1 to any report of or commentary on the trial or any person
2 connected with this trial by any medium of information,
3 including without limitation, newspapers, television, the
4 Internet, or radio, or form or express any opinion on any
5 subject connected with this trial until the case is finally
6 submitted to you.

7 We'll be in recess until Officer Hawkes tells you
8 to come back in. Thank you.

9 THE MARSHAL: Thank you. All rise for the exiting
10 jury, please.

11 (Outside the presence of the jury.)

12 THE COURT: Okay. The record will reflect that
13 this hearing is taking place outside the presence of the jury
14 panel.

15 Mr. Vasquez-Reyes, do you understand that you have
16 heard all of evidence that will be introduced against you at
17 the time of this trial by State of Nevada?

18 THE DEFENDANT: Yes.

19 THE COURT: And under the Constitution of the
20 United States and under the Constitution of the State of
21 Nevada, you cannot be compelled to testify in this case.

22 Do you understand that?

23 THE DEFENDANT: Okay. Yes.

24 THE COURT: You may at your own request give up
25 this right and take the witness stand and testify. If you

1 do, you'll be subject to cross-examination by the deputy
2 district attorney, and anything that you may say, be it on
3 direct or cross-examination, will be the subject of fair
4 comment when the deputy district attorney speaks to the jury
5 in his final argument.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. If you choose not to testify, I
9 will not permit the deputy district attorney to make any
10 comments to the jury because you have not testified.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you elect not to testify, I will
14 instruct the jury, but only if your attorney specifically
15 requests as follows: The law does not compel a defendant in
16 a criminal case to take the stand and testify and no
17 presumption may be raised and no inference of any kind may be
18 drawn from the failure of a defendant to testify.

19 Do you have any questions about these rights?

20 THE DEFENDANT: Yes.

21 THE COURT: Go ahead.

22 MR. FELICIANO: Oh, me?

23 THE COURT: No, my question was do you have any
24 questions about these rights, and he said --

25 THE INTERPRETER: Oh, no, I'm sorry.

1 THE COURT: -- yes.

2 THE DEFENDANT: No, none.

3 THE COURT: Okay. You're further advised that if
4 you a felony conviction and more than ten years has not
5 elapsed from the date that you've been convicted or
6 discharged from prison, parole, or probation, whichever is
7 later, and the defense has not sought to preclude from coming
8 before the jury and you elect to take the stand and testify,
9 the deputy district attorney in the presence of the jury will
10 be permitted to ask you the following questions: Have you
11 been convicted of a felony, what was the felony, when did it
12 happen; however, no details may be gone into.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Does Mr. Vasquez-Reyes have any priors
16 that would be relevant?

17 MR. SWEETIN: He does not, Judge.

18 THE COURT: Okay. So the district attorney has
19 indicated that you have no priors. So obviously, if you took
20 the stand and testify, you would not be subject to
21 questioning.

22 Have you had an opportunity to speak to your
23 lawyers about whether you should testify or not?

24 THE DEFENDANT: Yes.

25 THE COURT: And have they answered all of your

1 questions?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. And you understand that it's
4 your decision and your decision alone as to whether you
5 should testify, and regardless of what anybody says, it is
6 your decision that should be made after consulting with your
7 lawyers. However, it's your decision as to whether you
8 should testify or not.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you made a decision as to whether
12 you're going to testify or not?

13 THE DEFENDANT: Yes. I will not testify.

14 THE COURT: Okay. All right. So you're kidding,
15 right, we're done for the morning?

16 MR. FELICIANO: Yeah. I mean, we have Dr.
17 Harder --

18 THE COURT: Okay.

19 MR. FELICIANO: -- but not until 2:45.

20 MR. ROWLES: We do have to settle jury
21 instructions.

22 THE COURT: Yeah.

23 MR. ROWLES: So I think the parties will suggest if
24 this Court's available at 1:30, we can come back and settle
25 those.

1 THE COURT: Oh, no, you guys are going nowhere.
2 You're available right now.

3 MR. ROWLES: Well, we haven't received the
4 defense's instructions yet.

5 MS. HOJJAT: And we received two new instructions
6 this morning. I was going to --

7 THE COURT: Okay.

8 MS. HOJJAT: -- send out our instructions, but we
9 just --

10 THE COURT: Well, let's have them. Yeah, let's go.
11 I'm ready to do jury instructions so that we -- that we don't
12 have any more witnesses this morning, correct?

13 MR. FELICIANO: We do not.

14 THE COURT: Okay. So -- and we don't have
15 Dr. Harder until 2:45.

16 MS. HOJJAT: Yes.

17 MR. FELICIANO: Correct.

18 MS. HOJJAT: That's fine. Can we just take a
19 15-minute break so I can send the State the instructions --

20 THE COURT: Yeah, of course.

21 MS. HOJJAT: -- and get a copy of ours?

22 THE COURT: Yes, of course.

23 MS. HOJJAT: Thank you very much.

24 THE COURT: Of course. Absolutely.

25 MS. HOJJAT: Thank you.

1 THE COURT: Officer Hawkes, oh, the jury's not
2 going to be happy with me.

3 THE MARSHAL: You? I'm the one that's got to go
4 out and tell them.

5 THE COURT: I know. I hope they -- I hope they
6 don't be mean -- I hope they're not mean to the messenger.

7 THE MARSHAL: No. I'm a man with a gun.

8 THE COURT: How about tell them oh, 2:30. You can
9 tell them we don't have any -- I feel terrible doing this,
10 but tell them we don't have the a witness that can testify
11 until 2:45. That will be our final witness, correct?

12 MR. FELICIANO: For us, yes. And then they may
13 have rebuttal.

14 MR. SWEETIN: Yeah, independent --

15 THE COURT: Okay.

16 MR. SWEETIN: -- of what he says, I believe we
17 probably will have one or two witnesses.

18 THE COURT: Okay. So don't tell them it's the
19 final witness. Just tell them we don't have any witnesses
20 that can testify, and so how about 2:30?

21 THE MARSHAL: Yes, ma'am.

22 THE COURT: And we can make sure that we start.
23 Oh. Okay. Yeah, you guys go ahead, and you can exchange
24 your instructions and I'll go back and get the packets ready.
25 And then we'll go back and we can settle them informally.

1 We'll talk about them informally, then we'll obviously settle
2 them on the record.

3 MS. HOJJAT: Okay. I'm going to run back to my
4 office super quickly.

5 THE COURT: Sure.

6 MS. HOJJAT: I'll get them and I'll come back.

7 THE COURT: Yeah.

8 MS. HOJJAT: Okay.

9 THE COURT: No problem.

10 MR. ROWLES: Nadia, do you mind printing a copy for
11 us, too? Thank you.

12 (Court recessed at 9:35 a.m. until 11:32 a.m.)

13 (Outside the presence of the jury.)

14 (Pause in the proceedings)

15 THE COURT: Okay. You're going to file it? I
16 mean, because I do allow you -- what I usually do is the ones
17 you propose, I mark them as court's exhibit next in line, and
18 I'll let you make a record as to each one.

19 MS. HOJJAT: I did want to make a record as to each
20 one, but --

21 THE COURT: Okay.

22 MS. HOJJAT: -- I've been told to just file the
23 whole packet --

24 THE COURT: You can do that, too.

25 MS. HOJJAT: -- that we sent just for --

1 THE COURT: This's fine.
2 MS. HOJJAT: -- simplicity sake.
3 THE COURT: Okay. But you have copies of the
4 proposed, right, that I can mark?
5 MS. HOJJAT: Oh, yes, yes.
6 THE COURT: Okay. Perfect.
7 MS. HOJJAT: Yes.
8 THE COURT: Perfect. Okay. Okay. The record will
9 reflect that the hearing is taking place outside the presence
10 of the jury panel.
11 Is the State familiar with court proposed
12 instructions 1 through 29?
13 MR. SWEETIN: Yes, Your Honor.
14 THE COURT: Does the State have any objection?
15 MR. SWEETIN: No, Your Honor.
16 THE COURT: Do you have any further instructions
17 that you would like to propose at this time?
18 MR. SWEETIN: No, Your Honor.
19 THE COURT: Thank you. Does the defense -- is the
20 defense familiar with court's proposed 1 through 29?
21 MS. HOJJAT: Yes, Your Honor.
22 THE COURT: Any objections?
23 MS. HOJJAT: Yes, Your Honor.
24 THE COURT: Go ahead.
25 MS. HOJJAT: And just for the record, jury

1 instructions were preliminarily handled in Your Honor's
2 chambers. The defense had a proposed packet that we
3 submitted. The State had a proposed packet that they
4 submitted. The defense made objections to several of the
5 State's, and then the Court selected some of State's and some
6 of the defenses and together the final instruction packet.

7 I have filed a copy of the defendant's proposed
8 instructions that we had submitted to Your Honor.

9 THE COURT: Thank you.

10 MS. HOJJAT: At this point, I would just ask the
11 Court if we can just go through the final packet --

12 THE COURT: That's fine.

13 MS. HOJJAT: -- and I'll lodge my objections and
14 then make my record.

15 THE COURT: I don't think you have an objection to
16 all of them.

17 MS. HOJJAT: Not all of them, but I'll just go
18 through the ones that I have objections to.

19 THE COURT: You want me to go 1 through 29?

20 MS. HOJJAT: No, no. I'll just go through and
21 say --

22 THE COURT: Oh, sure. Okay.

23 MS. HOJJAT: -- the ones that I -- thank you.

24 THE COURT: So the first one's probably number 5.

25 MS. HOJJAT: Yes. So we did object to proposed

1 instruction number 5 for two separate reasons. First, we
2 objected because this instruction has been disfavored by the
3 federal courts. I know it is the Nevada instruction pursuant
4 to the NRS. I do agree with that.

5 However, it has been disfavored by federal court by
6 the Ninth Circuit. The instruction is -- it doesn't actually
7 define reasonable doubt. It talks about things that are not
8 reasonable doubt, but does not define what it means for the
9 State -- for what -- what state the jury needs to be in to
10 find proof beyond a reasonable doubt. That is not contained
11 within this instruction.

12 And it is a disfavored instruction because of the
13 wording. It's essentially negatively worded rather than
14 positively worded. So for that reason, we object to this
15 instruction.

16 And then further, we object to the fact that it
17 says defendant is presumed innocent until the contrary is
18 proved rather than unless the contrary is proved because
19 until suggests an inevitability as opposed to unless requires
20 conditions precedents of the State actually proving their
21 case beyond a reasonable doubt.

22 So for those two reasons, we objected to
23 instruction number 5.

24 THE COURT: Thank you. Does the State want to be
25 heard?

1 MR. SWEETIN: And as defense counsel indicated, I
2 believe this instruction as it's stated here statutorily, the
3 think the Court's required to give it.

4 THE COURT: Right. And so the Court's going to
5 give instruction number 5 as given. Any other objections?

6 MS. HOJJAT: No, I guess, it just -- I understand
7 the State's position is that it's statutory. We're moving to
8 strike the statute as unconstitutional essentially.

9 Oh, moving to the next instruction --

10 THE COURT: Uh-huh.

11 MS. HOJJAT: -- that we object to. Instruction
12 number 6 we objected to only in so me as we proposed a
13 circumstantial evidence instruction that we feel like is more
14 pertinent and appropriate, and so we were asking for our
15 instruction to be given in lieu of instruction number 6 or
16 alternatively for both instructions to be given.

17 THE COURT: Okay.

18 MS. HOJJAT: Instruction --

19 THE COURT: Does the State wish to be heard as to
20 number 6?

21 MR. SWEETIN: I would note that I believe that
22 instruction 6 properly states the law, and it does so in a
23 concise manner, and it's appropriate to be given at this
24 point.

25 THE COURT: Right. And I indicated I would give

1 instruction number 6 as written. Any further objections?

2 MS. HOJJAT: Instruction number 11, we objected to
3 as it's simply not relevant in this particular case. The
4 allegations in this case are that the sexual assault occurred
5 with young children. We're not talking about older
6 individuals with the capacity to consent. And so it talks
7 about physical force not being necessary. It's simply not
8 relevant in this case. That's not a issue that's been raised
9 in this case. It's not an issue that will be raised in this
10 case. It's not relevant. So we'd object to 11.

11 THE COURT: Does the State wish to be heard?

12 MR. SWEETIN: And the State is required to show
13 that the -- the sexual penetration was done without the
14 victim's consent or under circumstances where the perpetrator
15 would know that the victim wasn't able to give their consent.
16 Clearly under that scenario the State has to -- has to show
17 in regards to whether it was physical force, whether that
18 physical force was necessary. This properly instructs the
19 jury as to the state of law and therefore, it's necessary and
20 appropriate.

21 THE COURT: All right. And the Court indicated I
22 would give instruction number 11 as drafted. Any other
23 objections?

24 MS. HOJJAT: Instruction number 12, same objection.
25 It's not relevant. It's not on point with this case, and it

1 will simply confuse the jury because these are not issues
2 that have been raised in this trial.

3 THE COURT: Okay.

4 MR. SWEETIN: And --

5 THE COURT: Mr. Sweetin.

6 MR. SWEETIN: -- instruction number 12 does state
7 the state of the law and properly instructs the jury. We
8 submit that it's proper.

9 THE COURT: All right. And I indicated I would
10 give number 12 as drafted. Any other objections?

11 MS. HOJJAT: Instruction number 13 we object to for
12 multiple reasons.

13 THE COURT: Okay.

14 MS. HOJJAT: First, it draws undue attention to the
15 testimony of one witness in the case that it -- the jury,
16 technically speaking, there's no requirement that the
17 testimony of any witness be corroborated and any testimony
18 standing alone if it's believed beyond a reasonable doubt and
19 it supports guilt can be used to sustain a verdict of guilty.
20 If it's believed and it supports innocence, can be used to
21 sustain a verdict of not guilty. So this instruction first
22 and foremost draws undue attention to the testimony of one
23 witness.

24 Second, the history of this instruction and the way
25 this instruction came to be, this started as an appellate

1 standard. This did not start as a jury instruction. The
2 idea that there's no requirement that the testimony be
3 corroborated, it says sufficient to sustain a verdict of
4 guilt. And the reason it says that is that this started in
5 the case law as the defense challenging a conviction that had
6 already occurred at the appellate level.

7 And this is -- when we're talking about the history
8 of this case, this is going outside of Nevada. This is where
9 this instruction came from and how it came to Nevada. This
10 was an appellate standard. At some point, it got turned a
11 jury instruction. It is not appropriate to be giving the
12 jury essentially appellate standards of review. There's
13 plenty of appellate standards that exist. We're not telling
14 them about all of them.

15 For some reason this instruction has become an
16 instruction that is given to the jury. It is confusing to
17 jurors, and it frankly shifts the burden because it seems to
18 suggest that jurors that the State basically doesn't have to
19 do anything other than put on an alleged victim of sexual
20 assault -- and I'm sorry, I just realized that it says the
21 testimony of a victim rather than testimony of an alleged
22 victim. So I'm going to object to that as well.

23 I'm sorry, I just noticed this. I know I didn't
24 raise it earlier. But it basically tells the jurors that
25 there's no requirement that the State provide anything else.

1 And that's not accurate. The State has to prove their case
2 beyond a reasonable doubt. This instruction is confusing.
3 It focuses in on one witness, and it's burden shifting, and
4 it's an appellate standard.

5 And so for those reasons, we would object. And I'm
6 going to raise a new objection. I apologize, I know I didn't
7 raise it earlier --

8 THE COURT: That's okay.

9 MS. HOJJAT: -- I just noticed it.

10 THE COURT: Go ahead.

11 MS. HOJJAT: It should say an alleged victim rather
12 than a victim.

13 THE COURT: Okay. Does the State wish to be heard?

14 MR. SWEETIN: I would just note that this is the
15 state of the law and it's certainly relevant to this case and
16 it's appropriate to give.

17 THE COURT: And the Court indicated I would give
18 instruction 13 as drafted. Any other objections?

19 MS. HOJJAT: Instruction number 17, again, going
20 back to irrelevant instructions. This is not an issue that
21 has been raised in this case. Nobody is saying that some
22 touching occurred, but that it didn't actually appeal to or
23 arouse the lust, passions, or sexual desires of either
24 person. So it's just irrelevant and confusing to a jury.

25 MR. SWEETIN: And jury instruction number 17

1 instructs on -- correctly instructs on the law on an element
2 of the crime of lewdness with a child under the age of 14.
3 Clearly, it's a proper statement of the law, and it's
4 relevant. It should be given.

5 THE COURT: Okay. And I indicated I would give 17
6 as written. Any other objections?

7 MS. HOJJAT: Instructions number 18 --

8 THE COURT: Okay.

9 MS. HOJJAT: -- 19. Again --

10 THE COURT: Okay.

11 MS. HOJJAT: -- irrelevant, not issues that are
12 issues in controversy in this case, confusing to the jury,
13 and at this point, I would raise that I think there's been a
14 lot of irrelevant instructions and I think that's
15 cumulatively just confusing to the jury. There's all these
16 instructions on all these issues and theories that are not
17 theories of this case and not issues that are being raised in
18 this case. So, 18 and 19 as well.

19 THE COURT: Okay.

20 MR. SWEETIN: And in regards to 18, it's
21 instructing -- the instruction is instructing in regards to
22 whether or not the lewd and lascivious act is necessary that
23 the bare skin be touched. In this case, I believe there was
24 some testimony in regards to some touching that was over
25 clothes and some touching that was under clothes.

1 So I think that in defining a lewd and lascivious
2 act certainly it's relevant and appropriate. It is a
3 statement of law.

4 And on 19, basically, it's discussing whether
5 consent is an issue in regards to a -- a child who is
6 sexually touched, a child under the age of 14 who is sexually
7 touched indicating the consent is not necessary. Clearly,
8 that's a statement of the law. Clearly, in this case we have
9 touching and the State has the burden of showing that the
10 touching comported with a violation of the law. And consent
11 is an issue to that relevant, and this instruction's
12 appropriate.

13 THE COURT: Okay. And the Court indicate 18 and 19
14 would be given. Any further objections?

15 MS. HOJJAT: Yes, Your Honor, page -- or
16 instruction number 22. And I know that this is a hybrid of
17 the instruction -- of the instruction made -- proposed --

18 THE COURT: Sure.

19 MS. HOJJAT: -- in instruction -- defense proposed
20 instruction number D. We would object to this instruction.
21 We believe that D is the more accurate and appropriate
22 statement of the law as articulated in Crawley [inaudible].

23 THE COURT: Okay.

24 MR. SWEETIN: And just to be clear, the State would
25 disagree. I think that the State's instruction of the

1 instruction that's been presented by the Court clearly goes
2 through and details the elements that is necessary for the
3 jury to consider in a very specific format. The State would
4 submit it's a proper statement of the law, it's relevant to
5 this proceeding, and it should be given as is indicated.

6 THE COURT: All right. And I indicated I would
7 give instruction number 22 as drafted. Any further
8 instruction -- I'm sorry --

9 MS. HOJJAT: Yes, Your Honor, I'm sorry --

10 THE COURT: -- objections.

11 MS. HOJJAT: -- I accidentally skipped over 21. We
12 are objecting to --

13 THE COURT: That's okay.

14 MS. HOJJAT: -- instruction 21.

15 THE COURT: Okay.

16 MS. HOJJAT: This is -- it seems to be some
17 variance of a LaPierre (phonetic). I don't believe that this
18 is what the case says. It -- it theoretically is what the
19 case stands for but LaPierre is more accurately contained in
20 instruction number 23, which was the defense proposed
21 instruction that was given. LaPierre doesn't -- LaPierre
22 talks about instruction number 23, and 23 is the holding of
23 LaPierre, and so we believe 23 is appropriate, but that 21,
24 this is an instruction that the State just made up,
25 essentially. This is not a classic instruction in this case.

1 It's also not an issue that's been raised. Nobody's saying
2 why don't you remember the exact date because you don't
3 remember the exact date, he must be found not guilty.

4 THE COURT: Well, I don't think she testified to
5 any specific exact date. She testified --

6 MS. HOJJAT: Right.

7 THE COURT: -- to timeframes based on how old she
8 was and where they were living.

9 MS. HOJJAT: Precisely. So this --

10 THE COURT: So, I mean --

11 MS. HOJJAT: -- instruction --

12 THE COURT: -- that is the state of the law. They
13 don't have to prove a specific date, but they have to prove
14 at a minimum a timeframe, correct?

15 MS. HOJJAT: That's correct, but nobody is raising
16 that issue. We've proposed number 23, which adequately
17 explains that there needs to be some particularity regarding
18 each incident to uphold the charge and some reliable indicia
19 that the number of charges is correct. But there's --
20 there's no issue of dates.

21 I mean, dates are a thing that occurs in plenty of
22 cases, not just sexual assault cases.

23 THE COURT: No, but -- but just because the defense
24 isn't raising it, the State still has to prove these things,
25 correct?

1 MS. HOJJAT: The State does, but then this would be
2 an instruction that would be given in every single case from
3 here on out because there's plenty of cases where there's not
4 an exact date, there's a date range.

5 I mean, the charging document contains a date
6 range. There's never been a suggestion that an exact date
7 needs to be known in any manner.

8 THE COURT: Okay. Any response?

9 MR. SWEETIN: Well, I would just lay out -- I mean,
10 the LaPierre case was, you know, essentially very similar to
11 this case where you had a victim who was sexually assaulted
12 on a regular basis over an extended period of time.
13 Although, she couldn't remember specific dates and the
14 Supreme Court in that case said that's as long as she could
15 indicate, sort of a frequency of those particular events,
16 that was sufficient to show so long as there was a time
17 period pled.

18 I think in this case, we have the same situation
19 and it certainly might be an issue that comes to the jury's
20 mind in regards to when did these actual events happen? The
21 law is the State does not have to prove that, I think this
22 makes that very clear.

23 THE COURT: Right. And the Court indicated I would
24 give instruction number 21. Any other objections?

25 MS. HOJJAT: No.

1 THE COURT: Okay.

2 MS. HOJJAT: The only other objection -- the
3 general objection the defense would make is that we filed a
4 propose jury instruction packet, and there's obviously,
5 multiple instructions from our packet that are contained
6 here, so we would object to that.

7 The only other thing I just noticed is do we have a
8 playback instruction?

9 THE COURT: No, I don't ever give those. I don't
10 give a playback instruction.

11 MS. HOJJAT: Okay. So we would request a playback
12 instruction as well. That's not in our proposed packet, but
13 we would request one.

14 THE COURT: Okay. I'm not going to give a playback
15 instruction, but I'll tell you, juries are familiar with the
16 fact that they can get playbacks and read backs if they want
17 them. So any other objection?

18 MS. HOJJAT: Nope, other than the ones that we've
19 already stated on the record, no.

20 THE COURT: Okay.

21 MS. HOJJAT: Just we would object to the defense
22 instructions that were not included in that packet.

23 THE COURT: Does the defense have any further
24 instructions you'd like to propose? I mean, I usually let
25 you go through them one by one and make your record.

1 MS. HOJJAT: Okay.

2 THE COURT: That's up to you.

3 MS. HOJJAT: Yes, please.

4 THE COURT: Okay. And then I mark them. So do you
5 have them so I can mark?

6 MS. HOJJAT: Perfect. Yes, if we're going to go --

7 THE COURT: Okay.

8 MS. HOJJAT: -- one by one, I'll just --

9 THE COURT: Sure.

10 MS. HOJJAT: -- pull them out.

11 THE COURT: All right. Perfect.

12 MS. HOJJAT: So Defense Proposed instruction A is
13 based on CALCRIM 224.

14 THE COURT: Okay.

15 MS. HOJJAT: I know there is a two reasonable
16 interpretations instruction that has been traditionally
17 disfavored by the Nevada Supreme Court, but the Nevada
18 Supreme Court in Supranovich clarified that the disfavoring
19 of that instruction was based on the fact it wasn't a
20 complete instruction and provided the complete instruction,
21 which is CALCRIM 224.

22 So our position is this instruction is no longer
23 disfavored by the Nevada Supreme Court. They clarified what
24 it was they were disfavoring. It was taking out just one
25 portion of this instruction and proposing it. They've said

1 that the whole instruction needs to be given, and so our
2 position is that pursuant so Supranovich, this is an
3 appropriate pertinent instruction that should be given in
4 this case, that there are issues with circumstantial evidence
5 in this case that this instruction is on point, and that the
6 jury needs this instruction to [inaudible].

7 THE COURT: You can mark this as Court's exhibit
8 next in line. Does the State wish to be heard?

9 MR. SWEETIN: And the State would submit jury
10 number 6 as in the currently marked jury instruction clearly
11 lays out the consideration of circumstantial evidence,
12 purports with the law, and is sufficient and the instruction
13 provided by defense counsel would be cumulative and
14 potentially a bit misleading.

15 THE COURT: Okay. And the Court -- I indicated I
16 would not be giving Defense Proposed instruction A, but it
17 will be marked as Court's exhibit next in line. Can I see it
18 real quick because I usually sign it and write rejected.
19 Here we go.

20 The next one is Defense Proposed, I think, B?

21 MS. HOJJAT: Yes. And this is the alternative we
22 proposed to the credibility instruction that has been given.
23 And to clarify my record on that, I guess, we are not -- we
24 did not specifically object to the credibility instruction as
25 given, but we did propose this one as an alternative. So, I

1 guess, to the extent that we believe this one's more
2 appropriate, we were objecting to that one, not because
3 there's anything wrong with that one, but just because we
4 believe it's incomplete.

5 We believe B is far more complete, far more
6 thorough, provides the jury with more guidance and
7 instruction, so we have propose B.

8 THE COURT: Okay. So I indicated that B was not
9 going to be given, but it will be marked as Court's exhibit
10 next in line.

11 The next one is your Proposed C. I did give that
12 instruction as offered. The next one is --

13 MS. HOJJAT: Our Proposed D, by I believe --

14 THE COURT: -- D.

15 MS. HOJJAT: -- we already discussed. Your Honor,
16 we believe that this is a more correct statement of Crowley
17 and Townsend [phonetic] say.

18 THE COURT: Does the State want to be heard
19 regarding the multiple sex acts?

20 MR. SWEETIN: And Judge, I think, that as I
21 indicated before, the instruction that the Court has given
22 clearly lays out all the elements pursuant to law that the
23 jury is to consider, and I think is appropriate and complete,
24 and this would be cumulative, to say the least.

25 THE COURT: Okay. And I indicated that D would not

1 be given, but it's marked as Court's exhibit next in line.

2 The next one is E, and I believe we -- I did give
3 that instruction as proposed.

4 MS. HOJJAT: Yes.

5 THE COURT: Okay. My packet skips F.

6 MS. HOJJAT: Yes. F was the alternative that we
7 prosed to E. So we had E and F --

8 THE COURT: Okay.

9 MS. HOJJAT: -- which were similar.

10 THE COURT: All right.

11 MS. HOJJAT: So I will -- I'll submit it because
12 the Court chose E over F, but they were --

13 THE COURT: Okay.

14 MS. HOJJAT: -- they were alternatives that were
15 proposed.

16 THE COURT: All right. So we're at your G?

17 MS. HOJJAT: G. I believe the Court gave this.

18 THE COURT: Yep, I gave that one.

19 MS. HOJJAT: H, I what typo, it said lewdness with
20 a child under 14 rather than sexual assault. I believe Your
21 Honor corrected the typo and gave H.

22 THE COURT: Okay. So the next one is I.

23 MS. HOJJAT: I, yes. I is in response to the no
24 corroboration instruction. As the defense said before, we
25 believe the no corroboration instruction is confusing to the

1 jury. It's burden shifting, and it leads them to believe
2 that they are required to believe the testimony of a -- a
3 alleged victim.

4 I could personally say I've had multiple juries say
5 things like that to me before, what we were supposed to do,
6 we were told we have to believe her. They are interpreting
7 it that way. They are reading it that way. And so we
8 believe that I addresses that issue by explaining to them,
9 it's not saying you have to believe her. It's saying it's
10 your choice. And that's precisely what I says. There's no
11 law requirement that you believe the testimony of an alleged
12 victim beyond a reasonable doubt. Whether you choose to do
13 is left to your sound discretion as jurors.

14 And so we believe that this instruction, if the May
15 (phonetic) instruction, the Gaxiola (phonetic) instruction is
16 to be given, we do believe that this is a necessary
17 instruction that should go with it, explaining to the jurors
18 that the Court is not telling them they have to believe
19 anybody. The Court is leaving it to them to decide what they
20 believe. The Court is just telling them if they believe it
21 beyond a reasonable doubt, then okay, that's enough. And so
22 we proposed I.

23 THE COURT: Okay. Any response?

24 MR. SWEETIN: And jury instruction 13 as given by
25 the Court clearly lays out that there's no corroboration,

1 makes reference to reasonable doubt, which is the jury's also
2 instructed out on another jury instruction, clearly lays out
3 the instruction provided by the defense counsel. It would be
4 nothing more than cumulative.

5 MS. HOJJAT: And actually, if I can just supplement
6 this record really quickly.

7 THE COURT: Sure.

8 MS. HOJJAT: This instruction is pertinent, it's an
9 accurate statement of the law, and there's no other
10 instruction that encompass -- that describes this to the jury
11 in these simple terms that they'd understand.

12 THE COURT: Okay. And I indicated I would not be
13 given, but it will be marked as Court's exhibit next in line.

14 The next one is J.

15 MS. HOJJAT: The Court is giving J.

16 THE COURT: Uh-huh. The next one is K?

17 MS. HOJJAT: Yes. K is an inverse flight
18 instruction. We cited to -- we've had it given before in the
19 past. We cited to Crawford because Crawford approves of
20 inversely worded instructions, the flight instruction is
21 routinely given. In this case, the detective testified that
22 Mr. Vasquez-Reyes was told that there were accusations being
23 made against him by Guadalupe, and asked if he would go to
24 the police station, and he agreed to go to the police
25 station, according to the detective. He was not under

1 arrest, according to the detective. He freely and
2 voluntarily agreed to go and talk to them at the police
3 station.

4 And so based on that, K is pertinent. It's
5 relevant. It's appropriate in this case, and there's no
6 other instruction that encompasses this.

7 THE COURT: Mr. Sweetin?

8 MR. SWEETIN: And just quickly, there's no
9 authority or binding authority that's been provided by
10 defense counsel that would support giving of an instruction
11 such as this. The State would submit that the facts of the
12 case don't really lay out a situation where it would even be
13 relevant because in this particular case, there's a delayed
14 disclosure, and at the time they -- the police arrived and
15 find the disclosure, the defendant is there and they begin to
16 talk to him.

17 So the State would submit it wouldn't be
18 appropriate to give this instruction.

19 THE COURT: Okay. And I indicated K would not be
20 given, but it's marked as Court's exhibit next in line.

21 The in next one is L.

22 MS. HOJJAT: Yes. And L is our theory of the case
23 instruction. We are entitled to a theory of case
24 instruction. We are proposing a theory of the case
25 instruction. This is our theory of the case. We're asking

1 the Court to give it. No other instruction encompasses this.
2 It is pertinent and relevant.

3 THE COURT: Does the State wish to be heard?

4 MR. SWEETIN: And the State's position was the
5 entirety of this instruction's really argument. The defense
6 can argue this, but it's not appropriate for the judge to
7 instruct the jury on the defendant's arguments.

8 THE COURT: Right. And I indicated I believe that
9 L was purely argument, so this instruction will not be given,
10 but it will be marked as Court's exhibit next in line.

11 And I think we're up to M?

12 MS. HOJJAT: Yes, and then M is --

13 THE COURT: Is just the other -- it's basically the
14 other victim?

15 MS. HOJJAT: Correct, so it's -- it's also our
16 theory of the case instruction as to the other alleged victim
17 in this case. So same reason, we believe we're entitled to a
18 theory of the case instruction. This is the theory of the
19 case instruction that we are requesting.

20 THE COURT: And I indicated I would not give M for
21 the same reasons, but it will be marked as Court's exhibit
22 next in line.

23 I think that's it.

24 MS. HOJJAT: And then we proposed a verdict form in
25 which not guilty was the first option rather than guilty --

1 THE COURT: (To Law Clerk) David, can you go get
2 the verdict form from Cam?

3 MS. HOJJAT: -- because --

4 THE COURT: (To Law Clerk) Can you go get the
5 verdict form from Cam?

6 MS. HOJJAT: Because --

7 THE COURT: Sorry, I didn't bring it in.

8 MS. HOJJAT: No problem. And so to clarify that,
9 we did object to the verdict form because guilty is the first
10 option rather than not guilty. The defendant is presumed
11 innocent. So we object to their verdict form, and we are
12 proposing our verdict form, in which not guilty is the first
13 option for each of the charges.

14 THE COURT: Okay. I don't have the verdict form
15 yet. As soon as David comes back in. Sorry about that.

16 MS. HOJJAT: And if I can approach with the stack
17 of what was proposed by the defense, which was --

18 THE COURT: As you were doing it, I gave the --

19 MS. HOJJAT: Oh, perfect.

20 THE COURT: -- Clerk mine, so --

21 (Pause in the proceedings)

22 THE COURT: Okay. And I have the proposed verdict
23 form. Does the State have any objection to the proposed
24 verdict form? I don't know if you want to --

25 MR. SWEETIN: State does not object to the proposed

1 jury --

2 THE COURT: Okay.

3 MR. SWEETIN: -- verdict form, Judge.

4 THE COURT: And now I'll allow you to make any

5 objection.

6 MS. HOJJAT: Yes, the defense objects to the

7 proposed verdict form because the first option is guilty for

8 each of the charges rather than not guilty. The defendant is

9 presumed innocent and not guilty should be the option that

10 comes on the verdict form for each of the charges.

11 MR. SWEETIN: And Judge, just very quickly. I

12 mean, the purpose of the jury instructions is to make a

13 determination on guilt, and as you come to the verdict form,

14 guilt is the first thing that you see. I think it naturally

15 flows. I don't see how, you know, the order certainly

16 adversely affects the defendant in the least. It's just a

17 natural progression of the instructions.

18 THE COURT: Okay. I'll mark the defense proposed

19 instruction as Court's exhibit next in line.

20 Any other objections or any other proposed

21 instructions?

22 MS. HOJJAT: No, Your Honor.

23 THE COURT: By the defense? By the State?

24 MR. SWEETIN: No, Your Honor.

25 THE COURT: Okay. I think 2:30 be back. How long

1 do you think Dr. Harder will take? You're going to have your
2 rebuttals here and ready to go, right?

3 MR. ROWLES: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. HOJJAT: He's Mike's witness, so I --

6 THE COURT: Oh, okay. So you don't -- all right.
7 Okay. So you think we'll be able to finish with witnesses
8 today?

9 MR. SWEETIN: Oh, yes, I think we'll be able to
10 finish with witnesses for sure.

11 THE COURT: Oh, perfect. Okay. Good. All right.
12 Well, I'll see you guys at 2:30. Thank you for staying.
13 Thank you very much.

14 MS. HOJJAT: Thank you, Your Honor.

15 (Court recessed at 12:00 p.m. until 2:36 p.m.)

16 (Outside the presence of the jury.)

17 (Pause in the proceedings)

18 THE MARSHAL: Please come to order. Court is now
19 in session.

20 THE COURT: Okay. I'm assuming this is Dr. Harder?

21 MR. FELICIANO: It is.

22 THE COURT: Okay. You can bring in the jury panel.

23 MS. HOJJAT: Your Honor -- oh, go ahead.

24 MR. FELICIANO: So as to Dr. Harder's about to
25 testify. I believe we have witnesses in the room that we

1 anticipate in rebuttal. We have invoked the exclusionary
2 rule, so we're asking those witnesses to remain outside --

3 THE COURT: Okay.

4 MR. FELICIANO: -- while Dr. Harder testifies.

5 THE COURT: Is it an expert?

6 MR. SWEETIN: Yes, they are.

7 THE COURT: Okay.

8 MR. SWEETIN: They're both experts, and they were
9 noticed as rebuttal witnesses.

10 THE COURT: Okay. Who are they?

11 MR. SWEETIN: Dr. Roley and Dr. Kapel.

12 THE COURT: Okay. And they would be testifying in
13 the relation to whatever Dr. Harder testifies about?

14 MR. SWEETIN: That's correct, Judge.

15 THE COURT: Okay. Anything else?

16 MR. FELICIANO: And anything I relied on with --
17 that I'm using to talk to Dr. Harder today, I provided to the
18 State, and that should be sufficient for them to prepare for
19 their rebuttal testimony.

20 THE COURT: You are permitted to have experts sit
21 in during testimony, so I'll allow them to sit in, and you
22 can bring the jury panel in.

23 THE MARSHAL: Thank you, ma'am.

24 All rise for the entering jury, please.

25 (In the presence of the jury.)

1 THE MARSHAL: Thank you, everyone. Please be
2 seated.

3 THE COURT: Does the State stipulate to the
4 presence of the jury panel?

5 MR. SWEETIN: Yes, Your Honor.

6 THE COURT: And the defense?

7 MR. FELICIANO: Yes, Your Honor.

8 THE COURT: Okay. Mr. Feliciano, you may call your
9 next witness.

10 MR. FELICIANO: The defense calls Dr. Gregory
11 Harder.

12 THE COURT: Thank you. You can stand, I guess,
13 wherever you're comfortable.

14 MR. FELICIANO: Okay. Thank you.

15 THE COURT: Okay. If the witness would raise your
16 right hand so you can be sworn.

17 DR. GREGORY HARDER, DEFENDANT'S WITNESS, SWORN

18 THE CLERK: Thank you.

19 THE COURT: Thank you.

20 THE CLERK: Would you please state and spell your
21 name?

22 THE WITNESS: Dr. Gregory Harder, G-r-e-g-o-r-y,
23 H-a-r-d-e-r.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

1 BY MR. FELICIANO:

2 Q Thank you. Good afternoon, Dr. Harder.

3 A Hello.

4 Q How are you employed?

5 A I am self-employed as a psychologist.

6 Q Okay. And how long have you been so employed?

7 A Since 1997, so 24 years.

8 Q And as a licensed psychologist, what do you do?

9 A I do many things. I do competency evaluations for
10 speciality Court, risk assessments for the Court, various
11 therapeutic interventions. I mean, There's lots of things I
12 do.

13 Q Okay. And what's your educational background?

14 A I have a doctorate in psychology.

15 Q Okay. And undergrad work, what was your undergrad
16 in?

17 A Master's degree in psychology, bachelor's degree in
18 psychology also.

19 Q Okay. And have you testified in Clark County
20 before?

21 A Many times.

22 Q Okay. Any estimate of how many times you've
23 testified?

24 A 50 times, maybe, 75.

25 Q Okay. As part of your job as a licensed

1 psychologist, do you ever perform IQ tests?

2 A I do.

3 Q Okay. What exactly is an IQ test?

4 A It's -- it can range depending on the specific test,
5 but the one I administered was -- it was made up of several
6 different subtests that all measure individual traits of
7 intelligence, and when you combine them together, they
8 usually form kind of a general impression as to someone's
9 intelligence or IQ score.

10 Q And have you ever performed IQ tests in the past?

11 A Many times, probably thousands in my career.

12 Q And I think you said that the purpose of the test,
13 is that to determine a person's intelligence; is that
14 correct?

15 A That is correct.

16 Q So in this case, regarding Mr. Vasquez-Reyes, did
17 you perform an IQ test?

18 A I did.

19 Q And do you remember when that was?

20 A According to my notes, it was on June 8th, 2018.

21 Q And do you remember the overall result?

22 A I do.

23 Q And what was that?

24 A You're asking for did -- you're asking for like a
25 score or is that what you mean?

1 Q Yeah, what was his -- what was his overall score?

2 A So I -- it's an estimated score. The entire IQ test

3 was not completed, as I indicated in my report, but the score

4 was estimated to be approximately 61.

5 Q And what is the average score on this test?

6 A The average score is 100.

7 Q So when you have a test result of 61, what does that

8 mean to you?

9 A That means he performed very low. On a percentile

10 basis that's at the .5 percentile, which means he only did as

11 well as of five adults out of 1,000 that score on that test.

12 Q Okay. So as part of the IQ test, does it have

13 certain -- different parts?

14 A There's verbal parts, nonverbal parts. The

15 particular test I gave breaks it down to -- there's ten

16 different subtests. There's a measurement of the working

17 memory, processing speed, verbal skills, versus nonverbal

18 skills, things like that.

19 Q Okay. So is there something called the -- what, the

20 Wechsler Adult Intelligence Scale? Are you aware of that

21 term?

22 A Right.

23 Q Okay.

24 A He was administered the Wechsler Adult Intelligence

25 Scale 4.

1 Q Okay. And is there another part of the test called
2 the Wechsler memory scales?

3 A That's not an IQ test, but that was another test I
4 gave him as an assessment of his memory.

5 Q Okay. So in this case, did you perform the Wechsler
6 Adult Intelligence Scale test on Mr. Vasquez-Reyes?

7 A I did.

8 Q Okay. And did you also give him the Wechsler memory
9 scales?

10 A I did give him some of that test as well, yes.

11 Q Okay. Specifically, I want to talk to you about the
12 Wechsler Adult Intelligence Scale. You said that had
13 separate -- that has different parts?

14 A Correct.

15 Q Okay. And I just want to go through -- let's go
16 through each part. Is there -- is there a digital span test
17 that's part of that -- part of the test?

18 A The digit span test is a test that measures auditory
19 short-term memory, and he scored very low on that. He scored
20 a three. That's a -- on average score of an IQ subtest score
21 is ten. So his score on that was much lower than the average
22 person would score.

23 Q Okay. So you said he scored a three out of ten?

24 A Ten's average. So --

25 Q Okay.

1 A -- he could score as high as 18, 19, 20 points,
2 depending on the subtest.

3 Q Okay. And did you also perform a vocabulary test?

4 A Correct. And his score on that was four. Again, a
5 ten is average on all of the subtests.

6 Q Okay. How about -- and what is the vocabulary test
7 -- what does that test for us?

8 A It's just a general measurement of verbal
9 intellectual ability, someone's working knowledge of
10 different vocabulary words, being able to define basic words
11 that we might use in everyday language.

12 Q Okay. And is there a part of the test called matrix
13 reasoning?

14 A There is. That's a measurement of nonverbal
15 intellectual ability. It's sort of a pattern recognition
16 kind of a test.

17 Q Okay. And what did -- did you perform that on
18 Mr. Vasquez-Reyes?

19 A Correct. His score on that was a five.

20 Q Okay. And you said an average is ten, right?

21 A Correct. So again, much lower than average.

22 Q Okay. Is there another section of the test called
23 visual puzzles?

24 A Correct.

25 Q What is that?

1 A I scored a six on that test. That's a test
2 measuring visual spatial skills.

3 Q Okay.

4 A It's a measurement of nonverbal intellectual
5 ability.

6 Q And you said he scored a six on that?

7 A Correct.

8 Q Okay. And is there another part of the test called
9 similarities?

10 A Similarities is a test of abstract reasoning
11 ability. It's a verbal intelligence test measurement. He
12 got a four on that test.

13 Q Okay. Is there a section called coding?

14 A Coding is another measurement of nonverbal
15 intelligence processing speed, it measures visual memory,
16 things like that. His score on that was a four.

17 Q Okay. Is there another section called symbol
18 search?

19 A Correct, another measurement of visual, motor,
20 speed, visual intelligence. He scored a one on that test.

21 Q Okay. And lastly, is there an arithmetic test?

22 A Correct. That's -- it's a measurement of mental
23 math where individuals have to solve math problems in their
24 head. His score on that was a six.

25 Q Okay. So are you sighing that all of his scores

1 were below average?

2 A All of them are much lower than average, yes.

3 Q Okay. And I believe you said something about the .5
4 percentile; is that correct?

5 A If you take the average of all of his scores, it
6 looks to me that that's about where he scored, yeah, on the
7 .5 percentile.

8 Q Okay. So -- and just so we're clear, what exactly
9 does that mean?

10 A It means that compared to other people who have
11 taken that test, he's scoring much worse than most of them,
12 probably about five people out of a thousand would lower, and
13 the other 995 will score higher on the total of all those
14 test scores.

15 Q Okay. So in addition to the Wechsler Adult
16 Intelligence Scale, you had said you did the Wechsler memory
17 scales; is that right?

18 A Correct. I gave him four subtests from the Wechsler
19 memory scale. So it wasn't the complete test, but some of
20 the tests on there to measure his ability to remember things.

21 Q Okay. What was the first test that you performed?

22 A The logical memory test. On that test you read the
23 subjects, paragraph or two from a extort story and remember
24 as many details as they can from the story when they're done,
25 and his score on that was a one. Again, ten being average.

1 Much, much lower than average. He could only remember -- if
2 I remember right, nothing -- he couldn't remember anything
3 from that story.

4 Q Okay. And what was the next test you performed
5 under the memory scales?

6 A There's another test verbal paired associates where
7 subjects are read a series of 14 pairs of words, and you read
8 them one of the words, they have to remember what the pair
9 were that goes with it. His -- that was a --

10 Q Can you hear me?

11 A I might not have heard you. What did you say?

12 Q Okay. That last part, we were talking about the
13 verbal -- I think, the verbal paired associates; is that
14 right?

15 A Correct. He scored a three on that test.

16 Q Okay. So that was a three out of -- out of -- and
17 you said average is ten, right?

18 A Correct.

19 Q Okay. And what was the next test under that
20 section?

21 A So the next test was the logical memory two, which
22 is -- it's basically a test that administered about 20
23 minutes, 30 minutes later after the first memory test, and
24 it's seeing if they are able to remember anything from the
25 first story that was read to them or the second story that

1 was read to them.

2 So it's a delayed memory test, as opposed to the
3 logical memory one, which is an immediate memory test.

4 Q And how did Mr. Vasquez-Reyes score on that?

5 A He scored a one on that test also.

6 Q Okay. So one out of ten on the same test given
7 different times; is that correct?

8 A Right.

9 Q Okay. And anything else under that section that you
10 performed?

11 A He also did the verbal paired associates test again,
12 also about 20 or 30 minutes later. Again, he scored a three
13 on that test. That's another measurement of delayed memory.

14 Q Okay. And then any other tests that you performed
15 under that section?

16 A No.

17 Q That's it?

18 A That's it.

19 Q Okay. So on the Wechsler Memory Scales, overall how
20 did Mr. Vasquez-Reyes do?

21 A His scores were extremely, extremely low. I mean, I
22 don't remember if I wrote down the exact score for the
23 combined scores on that or not. I'm trying to look at my
24 report to see if I did.

25 Q Did you write down a percentile?

1 A He scored at the -- on those tests he's at a second
2 percentile, I believe.

3 Q What does that mean?

4 A That means he did better than two people out of a
5 hundred would score on that test.

6 Q Okay. So overall, from these two tests, can you
7 determine if Mr. Vasquez-Reyes is intellectually disabled?

8 A It -- the scores are in what they call -- they're
9 actually called a range. It's not necessarily a diagnosis of
10 intellectual disability. That's usually a diagnosis that's
11 formed when you also measure what's called adaptive
12 behaviors, such as, you know, is this individual capable of,
13 you know, social skills, motor skills, job skills, school
14 skills, kind of thing, diagnose them intellectually disabled
15 necessarily off just an IQ test but his was consistent with
16 someone who has an intellectual disability.

17 Q Okay. You just said that even -- so even with
18 somebody with intellectually disability who had scores like
19 this, that they could still work and like function in
20 society; is that fair?

21 A [Inaudible] some -- some may not be [inaudible].
22 But someone of a score his level, [inaudible] certainly.

23 Q Okay. I'm sorry, could you -- you broke up. Could
24 you repeat that last part?

25 A [Inaudible] score is possible to [inaudible] in

1 society.

2 Q Okay.

3 A Many people with intellectual disabilities could
4 not.

5 Q So in addition to a person's intellectual
6 functioning, could other medical issues -- could that affect
7 how they score on an IQ test?

8 MR. ROWLES: Objection, Your Honor. Foundation.

9 THE COURT: Yeah, you're going to have to lay some
10 foundation.

11 MR. FELICIANO: I mean, it's just -- it's just a
12 very general question.

13 THE COURT: Well, then lay some foundation.

14 MR. FELICIANO: Okay.

15 THE COURT: I mean, that may be true.

16 MR. FELICIANO: Okay.

17 BY MR. FELICIANO:

18 Q So you're talking -- we just talked about the test
19 scores that Mr. Vasquez-Reyes, how he did on the tests,
20 right?

21 A Correct.

22 Q Now, are there other things other than -- are there
23 other things other than their intellectual capabilities, are
24 there other things that can factor how they interact with
25 people?

1 MR. ROWLES: Objection, Your Honor. Foundation.
2 MR. FELICIANO: I cleared it up.
3 MR. ROWLES: Same question.
4 THE COURT: I don't know. I think it's still
5 foundational, so --
6 MR. FELICIANO: Well, I mean, I'm asking him if
7 there's anything. I'm not leading. I'm just asking if
8 there's anything generally that can -- that can affect that.
9 I don't know -- I don't know if there's anything -- anything
10 else to back up from on that as for as foundational.
11 THE COURT: Okay. I don't know. Can the doctor
12 answer that question? Can you answer that question, Doctor?
13 THE WITNESS: I mean, I could -- I can't say
14 specific the cause of any of his intellectual [inaudible]
15 [inaudible] problems could be other than I can hypothesize
16 that there's many possible -- there's a -- you could probably
17 list a thousand things that could cause someone to be
18 intellectually disabled from, you know, medical disorders,
19 accidents, injuries, substance abuse, mental illness, all
20 sorts of things could affect a person's brain functioning.
21 BY MR. FELICIANO:
22 Q Okay. Thank you. So if a person -- if a person's
23 intellectually disabled, would that affect how they interact
24 with others?
25 A I would imagine it would.

1 Q Okay. And do you know in ways that it would affect
2 the way they would interact with other people, same
3 conversation?

4 A I mean, if you're memory's not good, it might
5 [inaudible] will tell you, it might affect your [inaudible]
6 in a job -- in a job [inaudible], you know, you might not
7 remember to do tasks. It might cause people to think you're
8 slow and, you know, treat you differently.

9 Q So --

10 A [Inaudible] level in terms of that.

11 Q So would a person with -- with a intellectually
12 disabled person, is it possible that they could get more
13 confused than another -- than a person that doesn't have
14 intellectual disability?

15 MR. ROWLES: Objection. Leading.

16 MR. FELICIANO: I said if it could.

17 THE COURT: You are leading. I'm going to allow
18 him to answer.

19 BY MR. FELICIANO:

20 Q You can answer.

21 THE COURT: You can answer.

22 THE WITNESS: I mean, sure, if you don't have a
23 very high level intelligence, common sense that you would
24 have trouble understanding things, become more easily
25 confused.

1 BY MR. FELICIANO:

2 Q So when you're dealing with people that are
3 intellectually disabled, do people generally know if they're
4 actually disabled? People with low test scores?

5 A Some people do. Some people do not. My experience
6 working with low functioning people, they don't always
7 recognize they're low functioning.

8 Q Okay. So you did the IQ testing in this case, that
9 was June of 2018; is that correct?

10 A Correct.

11 Q Do you expect scores like these to change over time?

12 A Scores typically don't change very much over time.
13 They're very accurate and reliable.

14 Q Okay. And why is it -- why don't they change?

15 A Well, the measurements that are -- that are used
16 typically are -- they're -- they're -- they're tests --
17 they're measurements that are sort of the standard things
18 about your brain that are -- that are not easily changed. I
19 mean, they're not things that are related to education
20 necessarily. They're things that are just general abilities.

21 I mean, your memory, for example, doesn't really
22 change in terms of your ability to remember things or your
23 ability to -- to reason. That doesn't merely change with
24 time. I mean, you could get smarter but reading more books,
25 but your general intellectual ability doesn't really change

1 that much for most people.

2 Scores given on the people at the age 12 or the
3 same scores they'll get when they're 55 years old within a
4 few points in general.

5 Q Okay.

6 MR. FELICIANO: Court's indulgence.

7 THE COURT: Um-h'm.

8 MR. FELICIANO: Thank you, Dr. Harder. We'll pass
9 the witness.

10 THE COURT: Thank you. Cross-examination?

11 MR. ROWLES: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. ROWLES:

14 Q Doctor, can you hear me?

15 A I can hear you.

16 Q I want to a little bit about the examination you did
17 on Mr. Vasquez-Reyes. You would agree with me that the
18 examination you did was a brief exam; is that correct?

19 A That is correct.

20 Q The conclusions that you made were the result of
21 this brief examination that you testified to that was not a
22 full IQ test; is that correct?

23 A That is also correct.

24 Q In fact, you left out two subtests during your
25 examination of Mr. Vasquez-Reyes; is that correct?

1 A On the IQ test I left out two tests, yes.

2 Q Okay. And when you did the memory test, you

3 testified that that was not a complete test as well; is that

4 correct?

5 A That is also correct.

6 Q In fact, you're only able to give an estimated IQ at

7 this time; is that correct?

8 A That is also correct.

9 Q You didn't perform a CAT scan, did you?

10 A That is out of my league of expertise.

11 Q Okay. You didn't perform on MRI, did you?

12 A I did not.

13 Q Okay. When you met with Mr. Vasquez-Reyes, from my

14 understanding you discussed with him why you were there; is

15 that correct?

16 A Discussed what, I'm sorry?

17 Q Discussed with Mr. Vasquez-Reyes why you were there?

18 A Oh, yes, yes.

19 Q Okay. And you discussed with him the purpose of the

20 exam; is that correct?

21 A That is correct.

22 Q Okay. And you explained to him that the results

23 could be released to multiple parties; is that correct?

24 A I probably expressed to him that the report would be

25 released to his public defender. That was the person who

1 referred the request to.

2 Q Okay.

3 A Whether it would have been released to anyone else
4 I'm not sure if I told him or not.

5 Q And that brings up another point, Mr. Vasquez-Reyes,
6 you were asked by his defense attorney to conduct this
7 examination; is that correct?

8 A That is correct.

9 Q Okay. Do you have a copy of your report in front of
10 you, sir?

11 A I do.

12 Q Okay. Can you turn to Page 2?

13 A Okay.

14 Q Underneath the informed consent paragraph, can you
15 read the last sentence to yourself and look up to me when
16 you're done?

17 A I read it.

18 Q Did you inform him that these results could
19 potentially be released to other parties?

20 A I most likely did. That's what I wrote down.

21 Q And from my understanding, the defendant agreed to
22 these terms with you; is that correct?

23 A That is correct.

24 Q Okay. When you interviewed the defendant, he denied
25 any history of mental health; is that correct?

1 A Let me read my report. It looks like that is what
2 he said, correct.

3 Q He also denied to you any learning problems; is that
4 correct?

5 A That is also correct.

6 Q Okay. Sir, are you familiar with effort testing?

7 A Not by -- not by that term.

8 Q Okay. Are you familiar with the concept that
9 individuals may not put forth full effort when conducting
10 these examinations?

11 A That has certainly happened in my career a few
12 times.

13 Q Did you ever perform that type of testing to make
14 sure that he was putting forth full -- or full effort in this
15 exam?

16 A I believe he was putting for the his best effort in
17 this exam because his goal to appear intelligent. I don't
18 think he had any objective to appear that he wasn't. This
19 wasn't that kind of evaluation.

20 Q You note in your reports, though, that you did not
21 mention that type of effort testing that I just referred to?

22 A I did not note it because I didn't think that this
23 individual was malingering or trying to put forth a negative
24 effort.

25 Q All right. This examination, both the IQ test and

1 the memory test, those are English tests; is that correct?

2 A They are. They are administered in English. So
3 there was a translator that did read the questions to him.

4 Q So you interpreted a -- an English test through
5 Spanish with Mr. Vasquez-Reyes; is that correct?

6 A That is also correct.

7 Q Okay. Doctor, you would agree with me that people
8 with intellectual disabilities are still able to walk?

9 A Of course.

10 Q Still able to talk?

11 A Many of them are.

12 Q Okay. And I'm saying generally. They're generally
13 still able to go to work?

14 A That is questionable. Depending on how they score.
15 In his case, I would suspect he would be capable of working.

16 Q Okay. In fact, he did work as a welder for over a
17 decade. Were you familiar with is that?

18 A That doesn't surprise me.

19 Q Okay.

20 A But I'm not sure that I asked him about his career.

21 Q Okay. You would agree with me that generally people
22 with intellectual disabilities are still able to take care of
23 themselves, right, or can take care of themselves?

24 A Some can, some can't.

25 Q Okay. So the answer to that question would be yes,

1 right, Doctor?

2 A Rephrase the question, please.

3 Q Yeah, people -- that some people with intellectual
4 disabilities can take care of themselves?

5 A Some can, that's correct.

6 Q Okay. That some people with intellectual
7 disabilities are still able to function in society?

8 A Correct.

9 Q Okay.

10 A Intellectual disability has a large range from zero
11 to, you know, a hundred let's say hypothetically speaking --

12 Q I understand, Doctor.

13 A -- there's many levels, yes.

14 Q So the answer to my question would be yes, then,
15 right, Doctor?

16 A Yes.

17 Q Okay. You'd agree with me that people with
18 intellectual disabilities, some people with intellectual
19 disabilities are still able to have sexual intercourse; is
20 that correct?

21 A I'd imagine.

22 Q Okay. You would agree with me, however, that people
23 with intellectual disabilities can be manipulated; is that
24 correct?

25 A I think that's also true.

1 Q But you would agree with me that doesn't mean that
2 they're always every time manipulated; is that correct?

3 A That is also correct.

4 Q Okay. Does a person with -- you would agree with me
5 that a person with an intellectual disability will not always
6 parrot back what another person is saying; is that correct?

7 A That's correct.

8 Q Okay. But would you agree with me that it depends
9 on the circumstances?

10 A I would imagine.

11 Q Okay. That it depends on the types of questions
12 being asked?

13 MR. FELICIANO: I'm going to object at this point.
14 We're getting beyond what -- what we called Dr. Harder for.
15 This is well beyond the scope of what he's here to testify
16 about in his expert capacity.

17 THE COURT: Yeah, overruled. You may continue.

18 BY MR. ROWLES:

19 Q All right. You'd agree with me that it depends --
20 you indicated that you would agree with me that it depends on
21 the circumstances. And my next question was that it would
22 depend on the questions being asked to that person; is that
23 correct?

24 A So maybe you can explain more to me by parroting.
25 I'm not sure what you're trying to ask me.

1 Q Saying the same words back and forth. Just if I say
2 the word "the", the person with the intellectual disability
3 is going to every time parrot back the word "the", that
4 generally. Does that make sense?

5 MR. FELICIANO: I'm going to object because that --
6 I --

7 THE COURT: No, I don't --

8 MR. FELICIANO: -- I don't understand the question.

9 THE COURT: Yeah, I don't know if that makes sense.

10 BY MR. ROWLES:

11 Q Let me go this way here. You would agree with me
12 that it depends on the questions being asked?

13 A Well, I mean, as I testified earlier, I think he has
14 a very poor memory. So I'm not sure if he can repeat back to
15 you what people are saying. I mean, his ability to call
16 numbers and words were very limited. So that's why I'm not
17 sure where you're going with this.

18 Q Well, my question, Doctor, is that just because a
19 person has an intellectual disability doesn't mean that
20 they're always going to be manipulated, and you indicated
21 yes. Do you remember that line of questioning?

22 A Right.

23 Q Okay. And then my next question was that it would
24 depend on the circumstances, and you indicated yes. Do you
25 remember that?

1 A I do.

2 Q Okay.

3 MR. FELICIANO: Objection. Asked and answered.

4 MR. ROWLES: I'll move on.

5 THE COURT: Go ahead.

6 MR. ROWLES: Okay.

7 BY MR. ROWLES:

8 Q Doctor, during your review, have you had the

9 opportunity to review a police interview of the defendant

10 that occurred on April 16, 2016?

11 A I'm not sure I was given all that information.

12 Q Okay. So you did not see the interview conducted

13 with this defendant, right?

14 A I don't believe I was.

15 Q Okay. So you cannot make any comment as to what

16 happened on that day; is that correct?

17 A Correct.

18 Q Okay. So your testimony here is based on your

19 observations of him on June 8, 2018?

20 A That is correct.

21 MR. ROWLES: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. FELICIANO: No, thank you.

24 THE COURT: Okay. Thank you very much for your

25 testimony here, Dr. Harder, and we're going to sign off.

1 Thank you very much.

2 THE WITNESS: Thank you.

3 MR. FELICIANO: Your Honor, at this point, the
4 defense rests.

5 THE COURT: Okay. The defense has rested. Does
6 the State have any witnesses that they intend to call in
7 rebuttal?

8 MR. SWEETIN: Yes, Your Honor. May we approach
9 very quickly?

10 THE COURT: Of course.

11 (Bench conference begins)

12 THE COURT: So Judge, we have two witnesses to
13 present. One is Dr. Kapel. He did a competency evaluation
14 on the defendant way back when. He also is going to testify
15 in regards to basically his knowledge of the circumstances of
16 his contact with the defendant as well as review of the
17 transcript.

18 Now, there was a competency evaluation performed.
19 We are going to address that by just making reference to that
20 there was a mental health evaluation performed. So we're not
21 going to make reference to the competency issue.

22 We also have Dr. Roley, who was an attending
23 clinician at Stein. She's going to testify in regards to her
24 observations of the defendant over an extended period of time
25 of about two months, and the fact that she didn't find any

1 deficits with the defendant at that time.

2 Now, this was a competency evaluation that was
3 ordered by the Court. We are merely going to again address
4 this by asking her questions that there was a clinical
5 evaluation performed on him for an extended period of time.
6 She will testify that he was observed on a continuous basis
7 over that two-month period.

8 MS. HOJJAT: And, Your Honor, we have extensive
9 objections to both of these witnesses. I think we're going
10 to need to make a lengthy record on this.

11 THE COURT: Okay.

12 (Bench conference concluded)

13 THE COURT: Okay. At this time, ladies and
14 gentlemen, we're going to take a recess.

15 During this recess, you're admonished not to talk
16 or converse amongst yourselves or with anyone else on any
17 subject connected with this trial, or read, watch or listen
18 to any report of or commentary on the trial, or any person
19 connected with this trial by any medium of information,
20 including without limitation, newspapers, television, the
21 Internet, or radio, or form or express any opinion on any
22 subject connected with this trial until the case is finally
23 submitted to you.

24 Officer Hawkes will let you know when we're ready
25 to begin again. Thank you.

1 THE MARSHAL: Thank you. All rise for the exiting
2 jury, please.

3 (Outside the presence of the jury.)

4 THE COURT: Okay. Mr. Sweetin, why don't you have
5 your witnesses step outside.

6 Okay. The record will reflect that the hearing is
7 taking place outside the presence of the jury panel as well
8 as the witnesses.

9 Mr. Sweetin, why don't you go ahead and make your
10 record about what you want to do, and then I'll hear the
11 objections.

12 MR. SWEETIN: Sure. We have two witnesses that
13 we'd like to present in rebuttal to Dr. Harder, and that
14 would be Dr. Kapel and Dr. Roley.

15 Dr. Kapel performed a brief competency evaluation
16 upon the defendant back in 2018. At the time that he
17 performed that evaluation, he observed the defendant and made
18 some clinical conclusions in regards to his observation of
19 the defendant and the defendant's mental alertness and
20 ability to communicate.

21 He also was able to look at a statement that was
22 given by the defendant, the statement that was given to the
23 police on April 16th of 2016, and was expected to testify and
24 comment in regards to the word choices and whether there was
25 suggestibility in the course of that interview.

1 We also have Dr. Roley, who is what is currently a
2 clinician at Stein Diagnostic Center. The defendant went to
3 that facility and was there for approximately two months in
4 the course of determination of competency. Over that period
5 of time, she made observations of him, and will testify to
6 those observations and whether or not those observations
7 support a finding of memory or intellectual deficit.

8 Additionally, she will testify that she's had the
9 opportunity to review as part of her evaluation of defendant
10 at that time the report of Dr. Harder, and she will testify
11 and opine in regards to both his testimony here today and the
12 conclusions reached in that report and whether she agrees
13 with him or disagrees with him.

14 THE COURT: I guess, I'm more concerned with the
15 first one, Dr. Kapel, and why he's being called. Because it
16 sounds like the description of Dr. Roley, that sounds like
17 rebuttal. I'm just really concerned about there was a brief
18 competency evaluation, and he's going to testify about
19 observations and conclusions?

20 MR. SWEETIN: So there's --

21 THE COURT: Like what?

22 MR. SWEETIN: -- there's two -- really two prongs
23 to his testimony. The first prong is --

24 THE COURT: Okay.

25 MR. SWEETIN: -- that at the time that he observed

1 the defendant, which is approximately the same time as
2 Dr. Harder observed the defendant. He did not observe any --
3 anything of concern to him in regards to intellectual or
4 memory deficits.

5 He will also testify that based upon his expertise,
6 he knows that even if you did have a memory deficit, even as
7 described by Dr. Harder, that ultimately if they're not -- if
8 you're -- if a person is interviewed, there are not
9 suggestive questions that are asked, clearly that person can
10 make a clear statement of what actually happened.

11 Just because someone is mentally challenged does
12 not mean that they can't detail something that's happened in
13 their lives.

14 THE COURT: Okay. And it would be limited to what
15 you just indicate, even though it appears as though these
16 doctors never did any type of testing, like what we had
17 Dr. Harder do?

18 MR. SWEETIN: And there will be comment in regards
19 -- that Dr. Roley --

20 THE COURT: Okay.

21 MR. SWEETIN: -- in regards to that. She will make
22 mention that she did not do the testing that the doctor has
23 indicated that he did. And the reason she did not do that,
24 although she does do it if it is warranted, in this
25 particular case, because of her observations, that never

1 became an issue.

2 THE COURT: She didn't believe it was necessary,
3 then?

4 MR. SWEETIN: That's correct.

5 THE COURT: Okay. Okay.

6 MS. HOJJAT: And, Your Honor, we object for
7 numerous reasons. First and foremost, the State just made
8 one proffer as to Dr. Kapel and then I think kind of a made a
9 different proffer as to Dr. Kapel.

10 There was some statement in the first proffer that
11 he was going to be testifying about having read the
12 transcript of the defendant's statement and about whether
13 there was question -- the questioning in the defendant's
14 statement, and whether the questions were suggestive or
15 whether there were some suggestibility or something in the
16 defendant's statement. That is so far outside the scope of
17 the direct examination in this case that we would object to
18 that.

19 But actually, I'm going to back up. I'm going to
20 back up. I'll get to the substance of their testimony in a
21 moment. First and foremost, we're objecting to both doctors
22 because they weren't properly noticed, pursuant to statute,
23 and so we are objecting to both doctors testifying.

24 The testimony that each doctor --

25 THE COURT: What do you mean they weren't properly

1 noticed?

2 MS. HOJJAT: I mean they weren't properly noticed,
3 Your Honor. If you take a look at the notice that the State
4 provided, first of all, Dr. Lawrence Kapel was noticed as
5 working at Stein Forensic Hospital. I just asked him a
6 minute ago if that is his area where he works, he said no, he
7 does not work at Stein Forensic Hospital.

8 Furthermore, he was testified to test -- to testify
9 in the State's case in chief as an expert as to the
10 observations and psychological testing of defendant on or
11 about July 27, 2018 as well as defendant's demonstrated
12 and/or cognitive ability on or about that date as well as
13 limitations in ascertaining cognitive ability through
14 observation and testing.

15 And then noticed as a rebuttal, it simply said will
16 testify in rebuttal as to defendant's expert, Dr. Greg
17 Harder. That does not satisfy the statute, Your Honor.

18 Rebuttal witnesses still, when you're noticing a
19 witness for rebuttal, there is still the same requirements as
20 noticing a witness as an expert witness. There needs to be a
21 brief statement regarding a subject matter on which the
22 expert is expected to testify and then the substance of the
23 testimony.

24 There's no substance provided for either Dr. Kapel
25 or Dr. Roley. Dr. Roley's notification, I think, is actually

1 identical to Dr. Kapel's, which is interesting because it's
2 my understanding only one or the other of them could have
3 evaluated him on July 27, 2018. It's not possible that both
4 of them did. He was either at Stein or he wasn't at Stein.
5 And Dr. Kapel does not work at Stein.

6 So it looks like it was just a copy and paste from
7 one to the other. Neither one of these notifications contain
8 the substance of the testimony. There's literally no
9 statement as to the substance. There is the brief statement
10 regarding the subject matter, but we weren't told what
11 they're going to be saying. We weren't told anything about
12 this July 27, 2018 psychological testing that occurred. We
13 didn't receive reports from either doctor that goes into the
14 question of the IQ, goes into the question of cognitive
15 functioning of the defendant.

16 The State just stated, and we agree with him, these
17 individuals all looked at the defendant for the purpose of
18 competency evaluation. That's a completely different area.
19 They're not the same thing. Competency versus cognitive
20 functioning are two completely different things. The
21 individual can be intellectually impaired and be competent.

22 An individual can have a low IQ and be competent.
23 The testing, the observation, everything that occurred in
24 this case was as to competency. And the State is making
25 representations up at the bench, you know, we're going to --

1 we're not going to mention that it was competency, we're just
2 going to say that he was under clinical observation.

3 So basically, what they're saying they'd like to do
4 is they'd like to sweep under the rug the fact that neither
5 one of these doctors observed the defendant for the purpose
6 of determining cognitive functioning, which is what
7 Dr. Harder did, and instead, just try to have them get up
8 there and opine as to his cognitive functioning without any
9 testing being done, and he'd like for us not to touch on the
10 fact that neither one of these doctors performed any sort of
11 cognitive functioning testing.

12 That's so far outside of the scope of rebuttal. It
13 is not in compliance with the statute. Their notification --
14 they're notice that they provided us, we had no idea what
15 they were going to testify to until he just got up there and
16 Mr. Sweetin made those representations to the Court because
17 their notice that they provided us in no way complied with
18 the statute and gave us any information about the expected
19 substance of their testimony.

20 Court's indulgence.

21 At this point, all -- the only information we have
22 is the representations that Mr. Sweetin made has made, this
23 proffer that he has made as to both of these witnesses. And
24 the proffer that he's made as to these witnesses neither
25 witness can testify within the scope of what this testimony

1 that we presented was.

2 This is not rebuttal to our case. They are trying
3 to go outside of the case in chief that the defense has put
4 on. The only thing we put Dr. Harder on -- Dr. Harder got up
5 there and said I did this testing, his IQ came back as 61.
6 Is it a little bit malleable? Yes, it could be off by a few
7 numbers, but generally speaking, right around 61. That's all
8 he testified to.

9 Everything that they're trying to have these
10 doctors testify to is outside that scope. Their notice
11 didn't comply with statute. We had no idea what they were
12 going to be testifying to until right now. Now that we know
13 what they're going to be testifying to, we know that it's
14 outside of the scope of what our expert testified to, and
15 outside the scope of anything that we put on during our case
16 in chief. That's the important thing.

17 We did not put on an expert to get up there and say
18 because he has a low IQ, he's going to -- he -- he was
19 subjected -- I'll withdraw that.

20 We didn't put on anybody to say because he has a
21 low IQ, yes, I looked at this interrogation, and during this
22 interrogation in this, this, and this parts, he did X, Y, and
23 Z because he has a low IQ. None of those things occurred
24 during our case in chief.

25 We simply presented the fact that he has a low IQ.

1 If they have some expert who's going to say I did cognitive
2 functioning testing on him, and he does not have a low IQ,
3 then that would be within the scope of rebuttal. But
4 everything that they're trying to present is not within the
5 scope of rebuttal, and it's not relevant. And in addition to
6 not being relevant, we are prejudiced because we had no
7 notice of it, we had no ability to prepare our
8 cross-examination for it. We had no ability to prepare
9 anything, really.

10 We are moving to strike both of -- we are moving to
11 preclude both of these witnesses from testifying at this
12 point.

13 MR. SWEETIN: And first of all, defense counsel had
14 full reports of all this. This was evaluations that were
15 done at Stein. Both the State and defense got all of those
16 reports. The defense also had --

17 THE COURT: What does that have to do with
18 cognitive functioning? I mean, of course, they got the
19 competency reports and all of that. What -- I mean, really,
20 Dr. Harder did just testify about a bunch of test scores and
21 having a low IQ. He didn't diagnose him as intellectually
22 disabled. Basically said that his IQ was consistent with
23 someone with intellectual disabilities.

24 MR. SWEETIN: Well, cognitive --

25 THE COURT: That's pretty much the extent of it.

1 MR. SWEETIN: Cognitive functioning and memory are
2 both part of the process of determining competency. And
3 they're very essential parts of that. And they -- and both
4 of our witnesses would testify that they are considerations,
5 they are things that are looked at in that process.

6 THE COURT: A person's IQ?

7 MR. SWEETIN: Yes.

8 MS. HOJJAT: There was no cognitive functioning
9 testing done on Mr. Vasquez-Reyes by either one of these
10 doctors.

11 THE COURT: Well, I didn't know they --

12 MS. HOJJAT: Neither one of them --

13 THE COURT: -- did that during competency
14 evaluation, but I don't know.

15 MS. HOJJAT: They didn't. Their reports do not
16 mention that at all. If they did, it's not included in their
17 reports. I can tell the Court that.

18 MR. ROWLES: Because they'll testify that they had
19 zero concerns regarding it.

20 MS. HOJJAT: They didn't do any sort of --

21 THE COURT: So they're going to testify that they
22 didn't -- they didn't perform any cognitive functioning
23 testing because maybe that wasn't their role? I don't
24 understand.

25 MR. SWEETIN: Yeah. Well, in the case of

1 Dr. Roley, I mean, there was a very short examination that
2 was performed on the defendant by Dr. Harder. Dr. Roley had
3 him observed by herself and others at the facility over a
4 period of a couple months. And over that period of time, she
5 will indicate that if she had determined that there was an
6 issue in regards to IQ or cognitive functioning, she would
7 have required a test in that regard. There was no concern in
8 that regard. And for that reason, she did not have a test.

9 THE COURT: Well, I'm just wondering what does that
10 have to do with competency?

11 MR. SWEETIN: Well --

12 THE COURT: You mean, when we have -- when we send
13 somebody and they're committed by order, if there's any type
14 of question about their IQ, they do an IQ test? I mean, I
15 don't know, that may be true.

16 MR. SWEETIN: That is true, and that's what our --
17 Dr. Roley has told me. That if there's a concern in regards
18 to IQ, that there's some tests done, and that factors into
19 whether or not the individual is competent or not. It's one
20 of the factors that certainly is considered.

21 THE COURT: But what would have to happen to get a
22 concern?

23 MR. SWEETIN: That there would be something to
24 indicate that there was a diminished capacity. In this
25 particular case, she'll testify that he was observed on a --

1 on a daily basis, he was able to attend classes, he was able
2 to complete assignments, he was able to communicate with
3 other individuals. He was able to remember to do certain
4 tasks.

5 There was never any issue in regards to his IQ or
6 his memory. Now, defense counsel, you know, wants to come in
7 here and say, well, I -- this individual gave a memory test,
8 an IQ test over this period of time, a one-time test
9 essentially that was done in a -- in foreign -- you know,
10 with a Spanish speaking person in English, and we got this
11 result, so this means that this is what his intellectual
12 ability is.

13 Well, you know, that's -- that's not the case
14 because we have witnesses who specifically observed him over
15 a long period of time, who would contradict that and say, no,
16 that he was perfectly -- he didn't have any intellectual
17 deficit or memory issues.

18 MS. HOJJAT: They can't testify to that without
19 having done a cognitive functioning test. They can't just
20 get up there and say in our opinion there's nothing wrong
21 with his cognitive functioning. They never performed any
22 sort of testing.

23 If -- they sat through Dr. Harder's testing. If
24 they have some sort of issue with the testing that Dr. Harder
25 did, and we provided them with copies of Dr. Harder's testing

1 because we turned everything over to the State, we complied
2 with statute. If they -- if there's something specific that
3 they disagree with, that they think Dr. Harder did wrong,
4 that's one conversation.

5 They never did a single test. They never did any
6 sort of cognitive functioning assessment of him. There's
7 nothing in their reports, any of these things. Now they just
8 want to get up there and say he seemed fine to us? That's
9 essentially -- and they weren't even doing a cognitive
10 functioning assessment during their "he seemed fine" test.
11 He wasn't there for the purpose of that.

12 He's there for the purpose of competency. They
13 never do any sort of testing, they never do any sort of
14 assessment, and a year and a half later they want to come in
15 and say, well, you know, we never looked for these things,
16 but we didn't -- we didn't think there was a problem.

17 THE COURT: Yeah, I literally can't see how that is
18 rebuttal. I mean, I have Dr. Harder who testified about
19 basically someone's IQ, I mean, his testimony was very
20 limited about someone's IQ, that it was -- he gave us scores
21 and said it was consistent with someone with an intellectual
22 disability. Did not diagnose him with an intellectual
23 disability.

24 I -- again, I don't know how these other witnesses
25 would actually be rebuttal to that. And the real -- I mean,

1 I have a real concern about testifying about a statement
2 given to police and whether there was suggestibility. Oh,
3 that is clearly outside of rebuttal. Nobody testified to
4 anything about suggestibility.

5 I mean, I don't know what they're going to do with
6 this evidence, but they can only do what has come in. I
7 mean, he did some testing, he got some scores, and that they
8 were consistent with someone with an intellectual disability.
9 That's all that came in.

10 So I clearly don't think this -- somebody reviewing
11 a statement given to the police and talking about
12 suggestibility, that's outside of rebuttal. And I -- I mean,
13 I just -- I don't see how Dr. Roley would be a rebuttal
14 witness either.

15 MR. SWEETIN: Well, she would certainly testify in
16 regards to the fact that as she -- as she sat at Stein, that
17 she observed, you know, the fact that Dr. Harder had
18 indicated that there was a low IQ --

19 THE COURT: Right.

20 MR. SWEETIN: -- that she actually did not see
21 anything to substantiate that. She'd also testify in regards
22 to --

23 THE COURT: I just want to -- she would feel
24 comfortable testifying that there was nothing to substantiate
25 a low IQ even though she didn't do any type of testing to

1 determine the IQ? I mean, I'm just wondering.

2 MR. SWEETIN: Yes, she would testify that she did
3 not see an issue with his IQ or his memory. And she would
4 also say that the -- the tests that Dr. Harder performed in
5 this case were not complete, they were performed cross
6 language, which is not suggestible, and which should have a
7 much higher level of scrutiny because of the tests being done
8 that way. And --

9 THE COURT: Okay. Well, maybe she can testify to
10 that. I mean, that to me seems true rebuttal, if she's
11 coming in to rebut something that Dr. Harder said. But, I
12 mean, I don't know how you can lay the foundation for her to
13 say -- I guess, she would say I disagree, he doesn't have a
14 low IQ?

15 MR. SWEETIN: Well, she would say that she observed
16 him for a period of two months and over that period of time
17 she saw no need for IQ testing or memory testing.

18 MS. HOJJAT: That is not rebuttal.

19 THE COURT: Okay. And again, I don't think that's
20 rebuttal because what would it -- what would have to arise
21 for there to be a need because she was doing something else?
22 She was observing him for purposes of competency.

23 I mean, I've never heard of during a competency
24 evaluation doing an IQ. That doesn't mean it doesn't happen.

25 MR. SWEETIN: And, according to her, that is it

1 happen if it's -- if it's necessary. If there appears to be
2 a need. That's a -- that's part of the determination of
3 competency.

4 MR. FELICIANO: And just so -- I mean, and it's not
5 for the Court --

6 THE COURT: But that she didn't?

7 MR. FELICIANO: -- in all the years I've been
8 practicing, I've never -- I don't recall ever seeing an IQ
9 test performed pursuant to a competency eval.

10 MS. HOJJAT: Yeah.

11 MR. FELICIANO: She's are short. Do they
12 understand?

13 THE COURT: Right.

14 MR. FELICIANO: Can they pass the test? And they
15 move onward.

16 MS. HOJJAT: Yeah.

17 THE COURT: Right. I mean, I agree. I think she
18 can testify about any -- any, I guess, criticism she has
19 about the test, the way it was given, cross language, those
20 things, but this other stuff I just don't believe is
21 rebuttal.

22 And I don't -- I don't think you've made an offer
23 of proof as to Dr. Kapel at all because it appears as though
24 he just did a competency evaluation in -- in 2018. And I --
25 and that he reviewed the statement given to police and wants

1 to talk approximate suggestibility, which wasn't brought up
2 at all during Dr. Harder's.

3 So I don't think Dr. Kapel, there's been a proper
4 offer of proof. Dr. Roley, but her testimony would have to
5 be limited to what came out from Dr. Harder in rebuttal.

6 MR. SWEETIN: So in regards to Dr. Kapel, you know,
7 the fact that he -- he performed an examination or a
8 competency evaluation on the defendant at or about the same
9 time as the evaluation that was performed by Dr. Harder, and
10 did not observe anything that caused him concern in regards
11 to his -- his intellectual abilities, cognitive functioning.

12 THE COURT: Right. I mean, maybe if there was some
13 testing done regarding cognitive functioning, but it doesn't
14 sound as though there were. So you can call Dr. Roley and
15 her testimony.

16 MR. ROWLES: And Judge, during Dr. Kapel's
17 examination of the defendant, he does perform like a serial
18 three examination, and asks him basic abstract reasoning
19 questions, which the defendant is able to answer. And so the
20 serial three would be count backwards from 30 down to 3, to
21 demonstrate cognitive ability, which I think would be in
22 direct rebuttal of Dr. Harder's testimony, which basically
23 suggests that this guy can't remember a single thing or can't
24 count.

25 MS. HOJJAT: But he never said that.

1 THE COURT: Well, I don't think that's what he
2 said.

3 MR. ROWLES: But it was a one on the memory test,
4 and he indicated that after a 20 minute gap, he wasn't able
5 to remember anything. This is an individual who when meeting
6 Dr. Kapel, clearly demonstrated an ability to answer abstract
7 reasoning questions and do a serial three examination, which
8 is why Dr. Kapel was then led to the reasonable to believe
9 that he did not have any cognitive deficiencies when he
10 observed him.

11 MS. HOJJAT: Dr. Harder never testified that
12 Mr. Vasquez-Reyes couldn't complete the serial threes.

13 In terms of abstract reasoning questions, I'm not
14 sure I recall seeing that in Dr. Kapel's report. I'll look
15 for that. But in terms of the serial threes and counting
16 backwards, he wasn't -- he never testified to that.
17 Dr. Harder never said anything about that. He never said
18 that he couldn't to those types of things.

19 In fact, quite the opposite. He said, I would
20 expect an individual with this IQ to be able to hold their
21 job probably, to be able to function in society probably. So
22 none of these things rebut what Dr. Harder said.

23 THE COURT: Anything else?

24 MR. ROWLES: I mean, I don't think you have to
25 perform the exact same tests. He's performing testing

1 that --

2 THE COURT: Well, you have to do something that's
3 similar.

4 MR. ROWLES: And I think that --

5 THE COURT: I just don't think that competency is
6 similar to testing someone's IQ. And competency is such a
7 very specific examination, and it's defined by the law.

8 So I'll allow you to call Dr. Roley.

9 MS. HOJJAT: And the only record I'd like to make
10 as to Dr. Roley is, again, in her notice nowhere in her
11 notice does it talk about problems with Dr. Harder's testing
12 or report. They had all of this ahead of time. This is not
13 like they sat in Court and for the first time heard
14 Dr. Harder say these things. We provided everything ahead of
15 time. They had his report, they had the testing.

16 Were there any problems with it, it should have
17 been provided in the notice. The notice didn't have any of
18 those things as to the substance of what they expected
19 Dr. Roley to testify to on rebuttal. So we are left in a
20 position where we have no idea what she's going to get up
21 there and say. We've been unable to prepare any sort of
22 cross-examination of her, and we'd ask that that be kept out,
23 too, for the lack of sufficient notice.

24 MR. FELICIANO: And just to stress, the actual
25 scoring sheets that Dr. Harder used, I provided those many

1 months ago, the actual test sheets that he used.

2 MS. HOJJAT: Yeah, they --

3 MR. FELICIANO: And we haven't heard anything on it
4 up to this day.

5 MS. HOJJAT: There was nothing that he testified to
6 that Dr. Roley wouldn't have had months in advance. We have
7 nothing -- we have no information that she found any flaws
8 with any of it. None of it was contained in the notice. And
9 so we are prejudiced, we are truly prejudiced by her being
10 able to get up there now mid-trial and start critiquing his
11 evaluations when we weren't provided any notice of that.
12 Court.

13 MR. SWEETIN: Well, first of all, there was not a
14 report prepared by Dr. Roley. I would note that the defense
15 counsel has had all the reports Dr. Roley prepared in
16 relation to her contact with the defendant for -- for some
17 time now.

18 THE COURT: Okay. So Dr. Roley only prepared
19 reports that were consistent with the competency evaluation?

20 MR. SWEETIN: That's correct.

21 THE COURT: Okay. All right. So why don't you
22 keep saying the report doesn't say it?

23 MS. HOJJAT: Because the notice requirement,
24 pursuant to NRS, is that --

25 THE COURT: Okay. The notice --

1 MS. HOJJAT: -- you have to have the substance of
2 the --

3 THE COURT: Okay.

4 MS. HOJJAT: -- testimony.

5 THE COURT: I thought you were saying --

6 MS. HOJJAT: We are entitled --

7 THE COURT: -- the report.

8 MS. HOJJAT: Yes, I'm sorry, I should clarify. The
9 notice requirement requires both a brief statement regarding
10 the subject matter on which the expert's required to testify
11 and the substance of the testimony.

12 And so the report that we received from Dr. Roley
13 doesn't have anything about the substance of his testimony,
14 and the notice requirement also didn't comply with providing
15 us with the substance of the testimony.

16 So we're prejudiced because in neither fashion did
17 we receive any sort of notice about the substance of his
18 testimony about if there's some sort of flaw that she has
19 located in Dr. Harder's testing, that she's had for months
20 and months, we were not provided with any notice of it,
21 either via the notice requirement or via her report.

22 THE COURT: Okay.

23 MR. SWEETIN: And defense the was noticed that this
24 witness would testify in rebuttal of their expert, Dr. Harder
25 and Dr. Harder's subject matter that he was going to testify

1 is laid out. She's testifying in rebuttal to that particular
2 subject matter.

3 THE COURT: Can I see the actual notice? I tried
4 finding it, but --

5 MR. ROWLES: And Judge, I would just note that
6 Dr. Kapel -- or Dr. Harder did do an arithmetic examination
7 similar --

8 THE COURT: I'm sorry?

9 MR. ROWLES: Dr. Kapel -- or Dr. Harder did do an
10 arithmetic examination which required the defendant to count,
11 which from my -- that would be used to base his opinion.

12 THE COURT: Okay. Now, he did say he gave an
13 arithmetic test, but I thought he described it as doing math
14 problems in your head, and that's the extent of what he
15 testified to.

16 Okay. Anything else?

17 MS. HOJJAT: I would just, for my record, this
18 notice doesn't comply with the statute and the Nevada Supreme
19 Court has ruled on this issue in Perez v. State, Burnside v.
20 State. There needs to be the substance of the testimony
21 provided in the notice. There's no substance of the
22 testimony provided in this notice.

23 Will testify in rebuttal as to defendant's expert
24 Dr. Greg Harder provides us zero notice as to what that
25 individual is going to say. We're hearing today for the

1 first time that they have issue with the type of testing that
2 occurred, the type of testing that Dr. Harder did.

3 We're prejudiced two prongs for that. Number one,
4 we could have addressed those things with Dr. Harder when he
5 was on the stand if we'd been aware that their expert had an
6 issue with it. We could have brought that out. We could
7 have questioned him about it. We could have provided
8 information to the jury.

9 And two, we provide -- we had zero opportunity to
10 prepare cross at this point because we didn't know that there
11 -- they had an issue with that. That that expert was going
12 to testify that there were issues with that testing.

13 THE COURT: Okay. Again, this is Dr. Kapel's
14 notice. Is Dr. Roley in here, too?

15 MR. SWEETIN: She is.

16 THE COURT: Okay.

17 MS. HOJJAT: It's identical, Your Honor. That's
18 why they showed you that one.

19 THE COURT: Oh, okay.

20 MS. HOJJAT: Yeah.

21 THE COURT: So Roley is identical to --

22 MS. HOJJAT: I --

23 MR. SWEETIN: Well, Roley is in there.

24 THE COURT: -- Lawrence --

25 MR. SWEETIN: Yeah.

1 THE COURT: -- Kapel. Okay. Mr. Sweetin.
2 MR. SWEETIN: And as the State's indicated, clearly
3 we have laid out that Dr. Roley was to testify in rebuttal to
4 Dr. Harder, who was noticed by the defense to testify to very
5 specific things. The State submits that the notice is
6 adequate.
7 THE COURT: Okay. I'm going to allow Dr. Roley to
8 testify.
9 MS. HOJJAT: But she is limited to only testifying
10 as to the things Dr. Harder testified about?
11 THE COURT: Absolutely.
12 MS. HOJJAT: Thank you.
13 THE COURT: She is limited to testifying in
14 rebuttal.
15 MR. ROWLES: Your Honor, do you mind if I excuse
16 Dr. Kapel?
17 THE COURT: No. No, not at all.
18 MR. SWEETIN: Can I talk with Dr. Roley very
19 quickly, then?
20 THE COURT: Sure. Sure.
21 (Pause in the proceedings)
22 MR. SWEETIN: Can I just have the witness right in
23 here?
24 THE COURT: Sure. Sure, no problem. Are we ready
25 now?

1 MS. HOJJAT: There was just one thing I wanted to
2 clarify, Your Honor. Given the --

3 THE COURT: Is it okay if the witness is in here?

4 MS. HOJJAT: I'm sorry?

5 THE COURT: Is it okay if the witness is in here?

6 MS. HOJJAT: Maybe, if she could just step into the
7 corridor.

8 THE COURT: It's up to you.

9 MS. HOJJAT: It will be one minute.

10 THE COURT: Okay.

11 MS. HOJJAT: Thank you.

12 THE COURT: Thank you. The witness has left the
13 Courtroom.

14 MS. HOJJAT: Given the limitations Your Honor has
15 placed on the testimony that it is rebuttal only rebutting
16 what Dr. Harder has to say, we think it would be
17 inappropriate to introduce to the jury that she was observing
18 our client for two months or that our client was housed at
19 her facility or anything of that nature. We think she should
20 just be introduced as a doctor who reviewed Dr. Harder's
21 reports, who watched the testimony here today.

22 Because anything else starts getting into then the
23 perception, essentially, that she noticed the defendant, that
24 she's formed some sort of opinion, that she has some basis
25 for this opinion. She is purely to testify to errors of

1 Dr. Harder.

2 THE COURT: Well, she does have some basis to the
3 -- I mean, she does have some basis to know him, correct? I
4 mean, what you do plan on asking her in laying a foundation
5 for her opinions?

6 MR. SWEETIN: I'm going to ask her -- I was going
7 to ask her just foundationally, you know, essentially what
8 her qualifications are, where --

9 THE COURT: You hand you.

10 MR. SWEETIN: -- where she works, essentially.

11 MS. HOJJAT: That's fine.

12 MR. SWEETIN: And get that out. I was going to ask
13 her if she's familiar with this case.

14 THE COURT: Okay.

15 MR. SWEETIN: If she's familiar with this, and that
16 she was the --

17 THE COURT: Okay.

18 MR. SWEETIN: -- the treating physician -- treating
19 clinician. And then I'm going to ask if she's familiar with
20 a report that was prepared by Dr. Harder in regards to the
21 defendant.

22 THE COURT: Okay.

23 MR. SWEETIN: And then I'm going to ask her
24 specific questions in regards to the conclusions that are
25 reached in that report, and whether she has concerns in

1 regards to how those conclusions were reached, and whether
2 she -- she believes that those conclusions are dependable.

3 So that's essentially what --

4 THE COURT: Okay.

5 MR. SWEETIN: -- I'm going to be asking.

6 THE COURT: But I -- you said she was going -- she
7 was going to testify she's the treating clinician?

8 MR. SWEETIN: Yes.

9 THE COURT: I mean, don't you think that would
10 introduce why is she the treating clinician? That's the only
11 thing that causes me concern.

12 MR. SWEETIN: Well, I mean, I think it's -- I think
13 it's clearly -- I mean, our position is that, you know, the
14 fact that she did observe him for a period of two months
15 clearly, you know, makes her probably very probative in
16 regards to his actual condition.

17 THE COURT: I know, but how do you put that in
18 front of a jury without telling them why she did?

19 MS. HOJJAT: And we still don't think it's relevant
20 to rebuttal, Your Honor. Again, the evidence that was
21 presented was that Dr. Harder did this test, the IQ came out
22 as this number --

23 THE COURT: Well, if you're --

24 MS. HOJJAT: -- and this number --

25 THE COURT: -- if you're testifying in rebuttal and

1 you know the defendant, you've evaluated him, that's
2 certainly relevant. My only concern is how do you put that
3 in front of the jury without telling them that he was there
4 for a competency evaluation? I mean, that's --

5 MR. FELICIANO: Two months.

6 THE COURT: -- not coming in.

7 MS. HOJJAT: It's more of the --

8 THE COURT: I know, that's -- I'm concerned about
9 that.

10 MS. HOJJAT: It's more prejudicial than probative.
11 I mean, our position would be that it's not relevant, but
12 even if the Court finds it relevant, it's far more
13 prejudicial than probative. We think the line of questioning
14 should be as simple as what do you do, how are you employed,
15 where do you work, did you have a chance to review
16 Dr. Harder's report in this case, did you have a chance to
17 see Dr. Harder's testimony in this case, are there any issues
18 with either? Tell us your thoughts, essentially. That is
19 truly what the rebuttal here would be.

20 THE COURT: I mean, to me, that would be the most
21 effective way to do it without introducing any things that
22 aren't relevant and prejudicial to the jury panel.

23 MR. SWEETIN: If the Court wants to limit me to
24 that, I can do that.

25 THE COURT: Yeah, because I don't know how you tell

1 them that she observed him in a clinic for two months without
2 the jury raising their hand and asking you well, what the
3 heck was that for?

4 MR. SWEETIN: So I'll just get into her
5 qualifications. I won't talk to her about her place of
6 employment, and I'll ask whether she's had an opportunity to
7 review the -- the -- the --

8 THE COURT: Well, you can ask her her employment.
9 It goes to her foundation and her background. I just don't
10 want you to say the defendant was at her employment for two
11 months.

12 MR. SWEETIN: All right.

13 THE COURT: Okay. Officer Hawkes.

14 THE MARSHAL: All rise for the entering jury,
15 please.

16 (In the presence of the jury.)

17 THE COURT: Does the State stipulate to the
18 presence of the jury panel?

19 MR. SWEETIN: Yes, Your Honor.

20 THE COURT: The defense?

21 MR. FELICIANO: Yes, Your Honor.

22 THE COURT: Okay. The State may call their witness
23 in rebuttal.

24 MR. SWEETIN: The State would call Lia Roley.

25 //

1 DR. LIA ROLEY, STATE'S WITNESS, SWORN
2 THE CLERK: Thank you. Please be seated.
3 And please state and spell your name.
4 THE WITNESS: Lia Roley, L-i-a, R-o-l-e-y.

5 DIRECT EXAMINATION

6 BY MR. SWEETIN:

7 Q Dr. Roley, how are you currently employed?

8 A I'm employed with the division of public and
9 behavioral health, Stein Forensics Facility.

10 Q And what exactly is your background, your training
11 and experience, that qualifies you to perform those
12 functions?

13 A I have a bachelor's degree in psychology. I have a
14 master's degree in psychology, as well as rehabilitation
15 counseling. I have a doctorate in clinical psychology. I
16 have a -- from an APA accredited school. That's the American
17 Psychological Association. I have pre-doctoral internship
18 accredited with the American Psychological Association. I've
19 conducted a post-doctoral fellowship in forensic and neuro-
20 psychological evaluations. I've had many years of private
21 practice. Worked in inpatient medical rehabilitation
22 facilities. Worked for the speciality Courts doing
23 pre-commitment competent evaluations.

24 Q Approximately, how long have you been a practicing
25 psychologist?

1 A Nine years.

2 Q Now, I want to ask you, you had the opportunity to
3 observe Dr. Harder's testimony a few minutes ago; is that
4 correct?

5 A That's correct.

6 Q Are you familiar with an exam performed by
7 Dr. Harder on June 8th of 2018?

8 A Yes.

9 Q Have you had a chance to review the report of
10 Dr. Harder related to that exam?

11 A I did.

12 Q And have you had the opportunity to review the
13 background of that exam?

14 A I reviewed the test that he administered.

15 Q Okay. And these tests, did they relate to an
16 individual by the name of Armando Vasquez-Reyes?

17 A Correct.

18 Q Okay. Now, are you familiar with the conclusions
19 that Dr. Harder reached in that report?

20 A Yes.

21 Q And what would those conclusions be?

22 A That he tested in the range of someone who presents
23 with intellectual disability.

24 Q Okay. Now, do you have concerns in regards to the
25 manner in which he came to that conclusion?

1 A I do.

2 Q Could you briefly describe those to the members of
3 the jury?

4 A Psychological tests are what we call normed on
5 certain groups. So that's -- there's a very specific way
6 that the test should be administered, and they go through a
7 lot of extensive research prior to being published and out
8 for psychologists to use so that you know what the test is
9 measuring.

10 It's very important to follow manuals and
11 directions word by word, even asking questions in the way
12 that the manual explicitly states it. Everything is followed
13 to a T in order to maintain standardization.

14 So that means that you can compare your results to
15 the groups that test was initially tested on in the
16 population. Any deviation from that standardization of the
17 testing can result in inaccurate results.

18 Q Did you see potential deviation in the way that
19 Dr. Harder performed his testing?

20 A I did.

21 Q Could you describe that?

22 A These -- he used a -- from what I can infer, he used
23 a Spanish interpreter to simply translate the English version
24 of the test into a Spanish version. That is not the way that
25 test should be utilized. There are -- it's -- that is

1 recommended to be avoided in clinical practice, which is just
2 a testing in, you know, the community, let alone in a
3 forensic setting where there's higher stakes involved.

4 If someone does choose to go that route, our
5 professional ethics indicate that we need to cite the
6 limitations of our conclusions explicitly.

7 Q And when you say the limitations of your
8 conclusions, can you be more specific in regards to
9 limitations of a test given in English to a Spanish speaking
10 individual?

11 A Well, for example, many of the tests that he talked
12 about were -- were used verbal knowledge. So he explained
13 one of the tests on the Wechsler Memory Scale. He described
14 relaying a story, and that the interpreter would then
15 translate the story and then on the test the person is asked
16 to give specific words and phrases that were used from the
17 original story, which is extremely hard to do with an
18 interpreter.

19 So you're deviating from the manual, the
20 standardization of how test was normed in the community to
21 get accurate results.

22 Q Okay. Have you -- you ever familiar with any
23 dictates of your professional conduct, which causes you to
24 view certain tests with skepticism or high level of
25 skepticism?

1 A There are some tests that I would be more skeptical
2 of than others, sure.

3 Q Okay. In this particular case, are you skeptical of
4 the manner in which then the tests that were administered?

5 MS. HOJJAT: Objection, Your Honor. Skeptical?
6 Could we approach?

7 THE COURT: Sure.

8 (Bench conference begins).

9 MS. HOJJAT: What relevance is this witness's
10 skepticism? I mean, if she has hard science that says what
11 he did is wrong, that's one thing. But she's skeptical?

12 MR. SWEETIN: Yeah.

13 THE COURT: Yeah, I don't know. That word is maybe
14 throwing me. What is she going to testify to?

15 MR. SWEETIN: She is going to testify that she
16 questioned the results.

17 THE COURT: Okay. And then she's going to say why?

18 MR. SWEETIN: Yes.

19 THE COURT: Okay. I'll allow it.

20 (Bench conference concluded)

21 THE COURT: Okay. You may proceed.

22 BY MR. SWEETIN:

23 Q As a result of your review of this test and
24 observation of the testimony of Dr. Harder, could you
25 characterize your belief of the authenticity of the results?

1 A I would question the validity of those results.

2 Q Now --

3 A Significantly.

4 Q -- are you familiar with something called effort
5 measure testing?

6 A I am.

7 Q And what is that?

8 A Effort measure testing is a standard in forensic
9 psychology. It's a additional --

10 MS. HOJJAT: Objection, Your Honor. If we can
11 approach again. This is outside the scope.

12 THE COURT: Well, no, actually it came out during
13 the testimony of Dr. Harder.

14 MS. HOJJAT: During cross-examination, Your Honor,
15 not during direct examination. We presented nothing about
16 effort measure testing.

17 THE COURT: All right. Overruled. She can answer.

18

19 BY MR. SWEETIN:

20 Q Again, Doctor, are you familiar with effort measure
21 testing?

22 A Yeah, so in forensic practice there is high stakes a
23 lot of times, so people have reasons sometimes to either
24 exaggerate or minimize certain symptoms whether that be --

25 MS. HOJJAT: And Your Honor --

1 THE WITNESS: -- psychiatric or cognitive --
2 MS. HOJJAT: -- I'm sorry, I'm going to object, and
3 may we approach, please?
4 THE COURT: Sure.
5 MS. HOJJAT: Thank you.
6 (Bench conference begins)
7 MS. HOJJAT: So here's the problem, Your Honor.
8 This doctor actually specifically found that
9 Mr. Vasquez-Reyes was not malingering at all at Lakes
10 Crossing. And so for her to be up here testifying about
11 effort measure testing it is -- there's a suggestion and
12 implication that Mr. Vasquez-Reyes is malingering when every
13 single doctor who saw him ruled out malingering, including
14 the doctor whose testimony is being elicited from right now.
15 We think that this is inappropriate and it is
16 presenting to the jury something that is not an accurate
17 statement from which she even put in her report, and it's
18 going to -- it essentially puts us in a catch 22, right?
19 Either I cross-examine her on her report, which then opens
20 the door to everything that's been admissible, and then
21 doesn't fall within the scope of rebuttal, or I just let it
22 go, and it creates the implication to the jury that he was
23 malingering somehow when she --
24 THE COURT: Right.
25 MS. HOJJAT: -- even ruled out malingering.

1 THE COURT: She hasn't said anything about
2 malingering.

3 MS. HOJJAT: But that's where it's going.

4 THE COURT: Malingering I think is different than
5 effort measure testing.

6 MS. HOJJAT: They're not, though. Effort measure
7 testing is essentially the idea is that an individual
8 deliberately doesn't put forth effort, malingering, it's the
9 same thing.

10 THE COURT: Well, I think that would be different
11 if you're in a competency setting, and malingering is
12 different than you were putting for the testing, the purpose
13 in doing that on it.

14 MR. SWEETIN: And essentially, she's going to
15 testify to the fact that under this scenario that effort
16 measure testing is something that clinically you would -- you
17 would normally always do.

18 MS. HOJJAT: But there's no --

19 THE COURT: Oh, okay. But you -- you would --
20 perform a test that tests that?

21 MR. SWEETIN: Yes.

22 THE COURT: Oh, okay. All right. I'll allow her
23 to testify about that.

24 (Bench conference concluded)

25 THE COURT: Okay. You may proceed.

1 BY MR. SWEETIN:

2 Q I'm sorry, you were -- you were telling us what
3 effort measure testing was. What is that exactly?

4 A It's -- it's an additional test. Sometimes effort
5 measures are embedded within a psychological test, but other
6 times we give additional tests that measure someone's efforts
7 specifically on various tasks, whether it be we're giving
8 them a cognitive test, we might give a cognitive effort
9 measure to see if they're putting forth good effort because
10 then that would indicate potentially if they were giving good
11 effort on the real test that you wanted to give them.

12 Q Now, in regards to review of Dr. Harder's testing,
13 was there effort measure testing that was done in that case?

14 A Not that I saw.

15 Q Okay. Is that something that would be suggested in
16 that case?

17 A In any forensic evaluation.

18 Q Okay. So it's something that's normally done?

19 A Correct.

20 Q Thanks.

21 MR. SWEETIN: Nothing further.

22 THE COURT: Cross?

23 MS. HOJJAT: Court's indulgence.

24 THE COURT: Okay.

25 MS. HOJJAT: Can we approach?

1 THE COURT: Sure.

2 (Bench conference begins).

3 MS. HOJJAT: I just want to make sure I'm not
4 opening the door to anything on my cross-examination.

5 THE COURT: Okay.

6 MS. HOJJAT: I'm going to talk to her about the
7 fact that she didn't do an IQ test. That she didn't actually
8 personally perform an IQ test, and I want to make sure that
9 won't open the door to anything.

10 THE COURT: I think can you do that.

11 MS. HOJJAT: Okay. Just wanted to double check.

12 THE COURT: Okay.

13 MS. HOJJAT: Thank you.

14 (Bench conference concluded).

15 CROSS-EXAMINATION

16 BY MS. HOJJAT:

17 Q Good afternoon.

18 A Afternoon.

19 Q How are you today?

20 A Good. How are you?

21 Q Doing good. Thank you.

22 You did not perform an IQ test of Mr. Vasquez-Reyes?

23 A I did not.

24 Q Okay. You had the chance to review the IQ test that
25 Dr. Harder performed for Mr. Vasquez-Reyes?

1 A Correct.

2 Q And you've stated your criticisms?

3 A Yes.

4 Q You've stated the sum total of your criticisms?

5 A The -- I could say more, but what I said so far is

6 some of them.

7 Q You stated the main criticisms you have of that

8 test?

9 A Correct.

10 Q Okay. And it's my understanding it sounds like it

11 comes down to the language, the interpreter and the effort

12 testing?

13 A There was also another. He didn't write any of the

14 responses on the protocols, so I can't actually see what his

15 responses are. He just circled the score.

16 Q I see. Now, you talked about the Wechsler Memory

17 Scale versus Wechsler Intelligence Test.

18 A Um-h'm.

19 Q Okay. And you told us about how the lack of use of

20 an interpreter can affect answers in the Wechsler Memory

21 Scale.

22 A Not lack of use.

23 Q I'm sorry, I should clarify. The use of an

24 interpreter can affect the answers in the Wechsler Memory

25 Scale?

1 A Correct.

2 Q Okay. But you agree that's a different test from
3 the Wechsler intelligence scale?

4 A It can affect both of them.

5 Q Okay. But you agree the Wechsler Memory Scale is a
6 different test from the Wechsler Intelligence Scale?

7 A They're two different tests, correct.

8 Q Okay. And you agree that the number that was
9 produced from the Wechsler intelligence test was
10 approximately a 61?

11 A He said the full scale IQ was 61.

12 Q Okay.

13 A Dr. Harder did.

14 Q And you had the chance to review the documents?

15 A Yes.

16 Q That's the number, 61?

17 A I didn't -- he didn't -- I couldn't score it because
18 he didn't have the responses, so I just had to look what he
19 scored. I didn't calculate it to see if he had -- I didn't
20 run it through another system, and I couldn't --

21 Q Okay. So let's clarify. You didn't run it through
22 another system?

23 A No.

24 Q Okay. As you sit here today, you can't actually
25 dispute that Mr. Armando Vasquez-Reyes tested as a 61 on his

1 IQ test?

2 A I don't know how to answer that. Can you be more
3 specific?

4 Q As you sit here today, you don't have an IQ test
5 that has a different number, right?

6 A Correct, I don't.

7 Q Okay. So you can't dispute that 61 -- you can't say
8 to this jury to a degree of medical certainty that that 61 is
9 wrong?

10 A I have concerns regarding the 61.

11 Q Okay. But you're not telling them to a degree of
12 medical certainty that that 61 is wrong?

13 A I don't know how to --

14 Q Is it your testimony here today to a degree of
15 medical certainty that that's a wrong number?

16 A There's a lot of factors that go into that number,
17 so I'm not sure how to answer that.

18 Q Ma'am, yes or no, is it your --

19 THE COURT: Well, if the witness can answer yes or
20 no, she'll answer yes or no. If you can't, let me know, and
21 then I'll ask the attorney if she -- so if you want her to
22 answer yes or no, can you answer yes or no?

23 THE WITNESS: I don't know how to answer yes or no
24 for that question.

25 THE COURT: Okay.

1 MS. HOJJAT: Okay.

2 THE COURT: Do you want her to answer?

3 MS. HOJJAT: I'll ask another question.

4 THE COURT: Okay.

5 BY MS. HOJJAT:

6 Q You have no other number that you are presenting as

7 the IQ for Mr. Armando Vasquez-Reyes?

8 A Correct.

9 MS. HOJJAT: Court's indulgence. I'll pass the

10 witness, Your Honor.

11 THE COURT: Thank you.

12 MR. SWEETIN: Can we approach, Judge?

13 THE COURT: Sure.

14 (Bench conference begins.)

15 MR. SWEETIN: I think that they might have just

16 opened the door because she is specifically asking her as she

17 sits here today --

18 THE COURT: Do you dispute the 61?

19 MR. SWEETIN: Yes.

20 MS. HOJJAT: No, that's -- that's different, Your

21 Honor. I specifically came up here and asked that because --

22 THE COURT: Well, what do you -- I mean, what is it

23 you want to go into?

24 MR. SWEETIN: I want to go into the reasons why she

25 disputes the fact that there's a --

1 THE COURT: Well, you can go into the reasons why
2 she disputes 61 without going to she observed him for two
3 months. I mean, does she dispute the 61 other than what
4 she's testified to already regarding testing.

5 MR. ROWLES: Because of her interactions with him.

6 MR. SWEETIN: I think it's because of her
7 interaction with him and knowing --

8 MS. HOJJAT: Your Honor, I specifically came up
9 here and asked whether I was going to open the door or not
10 before I went into this line of questioning.

11 THE COURT: No, I'm not going to allow you to go
12 into all that on redirect.

13 MR. ROWLES: Do we want to reschedule --

14 THE COURT: But you can do a redirect.

15 (Bench conference concluded)

16 THE COURT: Okay. Any redirect?

17 REDIRECT EXAMINATION

18 BY MR. SWEETIN:

19 Q Just for clarification, Dr. Roley, you were asked in
20 regards to that 61 score, and you said you have concerns
21 about that; is that correct?

22 A That's correct.

23 Q Based upon your review of Dr. Harder's testimony and
24 your review of the records that you made reference to, do you
25 think that that's a dependable number?

1 A I do.

2 Q Okay. You think the 61 is a dependable number?

3 A Can you say more about that?

4 Q Sure. In regards to your view of the methods in
5 which Dr. Harder performed the exam as he testified to and as
6 documented, do you think that the IQ score is a dependable
7 number?

8 A I think it's questionable.

9 Q Okay.

10 MR. SWEETIN: No further questions, Judge.

11 THE COURT: Anything else?

12 MS. HOJJAT: Nothing else, Your Honor.

13 THE COURT: Okay. Doctor, thank you very much for
14 your testimony --

15 THE WITNESS: Thank you.

16 THE COURT: -- here today. You may step down, and
17 you are excused from your subpoena. Thank you for being
18 here.

19 Does the State have any other witnesses?

20 MR. SWEETIN: No, Your Honor.

21 THE COURT: Okay. Can I just have the attorneys
22 approach for a moment?

23 (Bench conference begins)

24 THE COURT: You guys aren't ready tonight, are you?

25 MR. ROWLES: I'm ready.

1 MS. HOJJAT: How late are we going to keep them?
2 MR. ROWLES: It will take a couple hours.
3 THE COURT: Can you go tonight?
4 MR. SWEETIN: Because we have --
5 MR. FELICIANO: We'd (indecipherable) tomorrow.
6 THE COURT: Pardon?
7 MR. FELICIANO: We (indecipherable) to go to
8 tomorrow.
9 MR. ROWLES: I think it will get us until past
10 6:30.
11 THE COURT: What?
12 MR. ROWLES: It will probably take at least an hour
13 for my close, probably an hour --
14 THE COURT: Okay.
15 MR. ROWLES: -- for their close.
16 MR. FELICIANO: And we're going to be here all
17 night.
18 THE COURT: So can we start at 10:30.
19 MR. FELICIANO: Sure.
20 MR. ROWLES: Yeah.
21 THE COURT: Okay.
22 MR. FELICIANO: Do you want to read instructions
23 tonight or tomorrow?
24 MR. ROWLES: Yeah, that way we can roll right into
25 opening -- or closings.

1 THE COURT: You don't mind if I read instructions
2 tonight?

3 MR. FELICIANO: Well, I don't know. You said it.

4 MR. ROWLES: I don't mind.

5 THE COURT: I mean, I don't know. It just --

6 MR. FELICIANO: Well, I mean, it might more natural
7 to read them and go right in like we usually do.

8 THE COURT: Yeah, it won't take me that long to
9 read the instructions. Yeah, we can just start tomorrow at
10 10:30. Okay.

11 (Bench conference concluded)

12 THE COURT: Okay. At this time, ladies and
13 gentlemen, you have heard all of the evidence that will be
14 introduced in this trial. We're going to start tomorrow
15 morning at 10:30.

16 I will instruct you on the law and then both sides
17 will have an opportunity to speak to you in their closing
18 arguments.

19 During this recess, you're admonished not to talk
20 or converse amongst yourselves or with anyone else on any
21 subject connected with this trial, or read, watch, or listen
22 to any report of or commentary on the trial, or any person
23 connected with this trial by any medium of information,
24 including without limitation, newspapers, television, the
25 Internet, or radio, or form or express any opinion on any

1 subject connected with this trial until the case is finally
2 submitted to you.

3 We'll be in recess until tomorrow morning at 10:30.
4 Thank you.

5 THE MARSHAL: Thank you. All rise for the exiting
6 jury, please.

7 (Outside the presence of the jury.)

8 THE COURT: Okay. The record will reflect that the
9 hearing is taking place outside the presence of the jury
10 panel.

11 I just wanted the defense to make a record of this.
12 The State provided an instruction that I guess is sort of a
13 Tavares instruction. Evidence that defendant committed
14 offenses other than that for which he is on trial, if
15 believed, was not received and may not be considered by you
16 to prove that he is a person of bad character.

17 And it's my understanding the defense does not want
18 that instruction to be given.

19 MS. HOJJAT: That's correct, Your Honor.

20 THE COURT: Okay. And so I'm going to mark this as
21 Court's exhibit next in line. Thank you.

22 MS. HOJJAT: Thank you. And then, the only other
23 record we wanted to make --

24 THE COURT: Sure.

25 MS. HOJJAT: -- we made it up at the bench, but I

1 know sometimes those can be difficult.

2 THE COURT: Go ahead.

3 MS. HOJJAT: The State's rebuttal witness,
4 Dr. Roley started talking about effort testing, and the fact
5 that effort testing wasn't done in this case, and that that
6 could compromise the results, and basically suggested that
7 perhaps, Mr. Vasquez-Reyes wasn't putting forth full effort
8 during the IQ test.

9 We objected to that line of questioning because of
10 the fact that what the jury doesn't know is that she observed
11 him for two months at Stein Hospital, and, in fact, ruled out
12 any sort of malingering. He was actually adamant to her and
13 to all the doctors there that he doesn't have any sort of
14 psychological issues, doesn't have any sort of psyche --
15 psychological functioning issues. He presented as the exact
16 opposite.

17 And this witness was aware of it. We obviously
18 couldn't cross-examine her on that due to the fact that it
19 was more prejudicial than probative to Mr. Vasquez-Reyes and
20 any sort of cross-examination would open too many doors and
21 too many questions for the jury.

22 But we objected to the State being allowed to lead
23 her there in their lining of questioning because it's one
24 thing for them to cross-examine our doctor about this being
25 protocol, that he should have done and he didn't do it. But

1 for her to suggest that there was some sort of assumption
2 that Mr. Vasquez-Reyes made a -- might have deliberately
3 malingered when she herself expressly ruled out malingering
4 when she evaluated him, she didn't find any signs of
5 malingering, and he was putting forth full effort in
6 everything, and in fact, presented as the exact opposite.

7 He was not attempting to present himself as being
8 intellectually disabled or having any sort of psychological
9 issues. He said he was competent, and he wanted to go to
10 trial. That was his main push when he was at Stein Hospital.

11 And so that was very prejudicial to
12 Mr. Vasquez-Reyes, and the fact that the State was allowed to
13 elicit that, we would move for a mistrial.

14 MR. SWEETIN: And if I can respond.

15 THE COURT: Sure.

16 MR. SWEETIN: In regards to the testimony that was
17 limited to this witness, it just related to an evaluation
18 that was done by Dr. Harder some months before this witness
19 even saw the defendant. And in that regard, in that very
20 limited regard, she testified as to the industry norms in
21 regards to the performing a test such as what Dr. Harder
22 performed.

23 And she testified that a norm would be performed,
24 this particular test. So if, in fact, we were talking about,
25 as the State wanted to, essentially the observations of this

1 doctor over the period of time that the defendant was at
2 Stein, you know, then I think that we would have an issue in
3 regards to the conclusions of this doctor at that time.

4 But this is a different time, and she was merely
5 testifying to that particular evaluation. So the State
6 submits it's sort of apples and oranges clearly, it's -- it
7 was not improper.

8 THE COURT: Right. And I allowed her to answer the
9 questions, so the motion for mistrial is denied. Thank you.

10

11 MR. FELICIANO: Thank you.

12 MS. HOJJAT: Thank you.

13 THE COURT: See everybody tomorrow morning.

14 MR. SWEETIN: See ya, Judge.

15 (Court recessed at 4:14 P.M., until Tuesday,

16 October 15, 2019, at 10:42 A.M.)

* * * * *

INDEX

WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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DR. GREGORY HARDER (Via Video Conference)	50	65		
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STATE'S REBUTTAL WITNESS:

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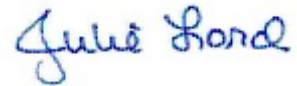
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EXHIBITS

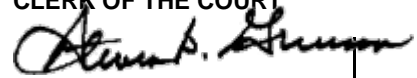
<u>DESCRIPTION</u>	<u>ADMITTED</u>
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(No exhibits admitted)

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



JULIE LORD, TRANSCRIBER
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)	CASE NO. C-16-316382-1
)	
Plaintiff,)	DEPT. NO. XII
v.)	
)	
ARMANDO VASQUEZ-REYES,)	
a/k/a ARMANDO VASQUIEZREYES,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 15, 2019

RECORDER'S TRANSCRIPT OF HEARING:
JURY TRIAL - DAY 7

APPEARANCES:

FOR THE STATE:	JAMES R. SWEETIN, ESQ. Chief Deputy District Attorney
	WILLIAM C. ROWLES, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	MIKE FELICIANO, ESQ. NADIA HOJJAT, ESQ. Deputy Public Defenders

ALSO PRESENT:

ALEX AVANTS
MARIA PERALTA de GOMEZ
MARIA PETERS
Spanish Interpreters

RECORDED BY: KRISTINE SANTI, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 15, 2019

2 (Case called at 10:42 a.m.)

3 (In the presence of the jury.)

4 THE MARSHAL: Thank you, everyone. Please be
5 seated.

6 THE COURT: Does the State stipulate to the
7 presence of the jury panel?

8 MR. SWEETIN: Yes, Judge.

9 THE COURT: And the defense?

10 MR. FELICIANO: Yes, Your Honor.

11 THE COURT: Thank you. Good morning, ladies and
12 gentlemen. It's now my job as the Judge to instruct you in
13 the law that applies.

14 THE MARSHAL: I don't have them.

15 THE COURT: Isn't that funny. Okay. They're all
16 back there. Do you mind grabbing them?

17 THE MARSHAL: Oh, I'll be right back.

18 THE COURT: That's okay. I am required by law to
19 read the jury instructions to you. I am going to provide you
20 with a copy of the jury instructions. When Officer Hawkes
21 comes back, there's 29 of them. Each of you will have your
22 own copy, and you'll be able to take your packet when you go
23 back to deliberate upon your verdict.

24 No problem. We were just all ready to go. Okay.
25 Officer Hawkes is going to pass them out. As he's passing

1 them out --

2 (COURT READS JURY INSTRUCTIONS TO THE JURY)

3 THE COURT: The State of Nevada may open and close
4 the arguments.

5 STATE'S CLOSING ARGUMENT

6 MR. ROWLES: Thank you, Your Honor.

7 Like, it's rape, but not forced. It's rape. Those
8 are the words of the defendant, Armando Vasquez-Reyes, on
9 April 16, 2016 when he spoke to the police. Like, it's rape,
10 but not forced.

11 Ladies and gentlemen of the jury, in every criminal
12 case the State must prove two things beyond a reasonable
13 doubt. One, whether a crime occurred. And two, whether the
14 defendant committed the crimes.

15 Now, in this case, it's not a who done it. If a
16 crime occurred, we know who committed those crimes.
17 Guadalupe told us who did it. Stephanie told us who did it.
18 The defendant told the police he did it. If a crime
19 occurred, the defendant committed those crimes.

20 So the only question left to ask then is whether in
21 this case crimes occurred. So before we do it, I think it's
22 important to take a little bit of a look at what the
23 testimony was over the last several days.

24 We know that on April 16, 2016 the police were
25 called for a domestic disturbance. That there was an

1 incident regarding tools between the defendant and Stephanie
2 and her husband. An argument between Rosalba and the
3 defendant.

4 We know at that time when the police arrived, they
5 learned that Guadalupe was living there at the Berkley
6 address with the defendant, with her mother, Rosalba, with
7 her sister, Stephanie, and Stephanie's husband, as well as
8 with her Mael, and his wife.

9 We know that within minutes, from what Rosalba told
10 us, of the police arrival, Guadalupe approaches the officers,
11 and she disclosed several years of sexual abuse at the hands
12 of the defendant.

13 What the police uncovered and what was brought
14 before us in trial was around a range from 2005, when Rosalba
15 first came to Las Vegas, to 2016. Rosalba told us that in
16 2005, she moved to Las Vegas. Then she meets the defendant.
17 That they begin to date, and that they eventually move in
18 together.

19 We know when she first arrived in Las Vegas her
20 children were not here. Guadalupe, Mael, and Stephanie were
21 still living in Mexico. But we know that her children
22 followed her soon in 2007, and that throughout the years they
23 all lived together in a number of different residences. We
24 heard about the apartment, the apartment with the pool, the
25 green house, the second green house, the two-story house, the

1 pale house, all with different addresses associated to them,
2 such as the Ferguson Street, Berkley address, Stafford
3 Street.

4 One thing was constant, however, throughout those
5 years, that Guadalupe lived with the defendant. Various
6 people came and go. Mael level, came back. I believe
7 Stephanie left at one time, came back.

8 One thing was also constant. That during that time
9 period, Rosalba worked nights. Primarily worked nights. And
10 that the defendant worked days. I believe we were told that
11 he worked primarily from 6:00 a.m. to 2:00 o'clock in the
12 afternoon.

13 So during that time period, the defendant, while
14 Rosalba was at work, had access to Guadalupe and Stephanie,
15 was home with Guadalupe, was home with the children without
16 their mother there.

17 Guadalupe told us when she first moved to Las
18 Vegas, the abuse started relatively shortly thereafter. She
19 told us it started in the apartments. That the defendant
20 invited her into the room. That the defendant took off her
21 clothes and touched her breasts. That the defendant touched
22 her butt. That the defendant touched her vagina.

23 We know that Guadalupe told us that the defendant
24 told her not to tell anyone. And she told us that she
25 trusted him. This was a man whom she was living with. She

1 was a man who was dating her mother. This was a father
2 figure to her, who had touched her in her vaginal area,
3 touched in her butt, and told her not to tell anyone. And
4 she told us that she trusted this man growing up throughout
5 the years when she was a child.

6 She told us that this started when she first moved
7 in around five or six years old. We know that the abuse did
8 not stop there. We know that it began to escalate. We know
9 that while she was living in what she believes either to be
10 the apartment and the pool or the first green house that she
11 was once again, in a room with the defendant.

12 She told us that the defendant closed the door on
13 this occasion. That he exposed his penis. And that he told
14 her to touch it. And she demonstrated exactly how she
15 masturbated his penis. Exactly how that man showed her to
16 masturbate his penis. And she described on this occasion
17 ejaculation, cumming on the chest.

18 And no, ladies and gentlemen of the jury, he didn't
19 stop there either. The abuse continued as she grew up
20 throughout the years, six, seven, eight, nine, ten, as she
21 moved throughout the residences from the apartment with the
22 pool, to the green house, to the second green house. That
23 abuse continued and it escalated.

24 She told us that it went from touching her to
25 having her touch him to sexual penetration. And she

1 described an incident the first time she remembers it
2 happening, that she was living in either the apartment with
3 the pool or the green house. That the defendant brings her
4 into the room, closes the door, starts to touching her body,
5 lifts her legs, and puts his penis inside of her anus.

6 Guadalupe told us that she [sic] told him
7 everything was okay, and not to tell. When she was living in
8 the apartment with the pool or the green house, she moved
9 here at five or six, she was six, seven, eight years old
10 around that time period.

11 A man dating her mother, a man she trust trusted, a
12 man she looked up to putting his penis inside of her anus and
13 telling her that it's okay.

14 It didn't stop there, because she also described to
15 us a time at the green house, a time that she remembers that
16 it was a little bit different than the rest. A time that she
17 remembers when she was on her knees, on the ground facing the
18 wall. And the defendant approached her from behind. The
19 defendant inserted his penis inside of her anus.

20 She told us as she continued to grow up, as she
21 continued to move to residences, the abuse continued, and she
22 described the times that she remembered, the times that the
23 addresses, the residences that were different. Because
24 ladies and gentlemen, remember what she told us? She told us
25 that this happened -- ranged from once a week to three times

1 a week over those years, and so she was describing times that
2 stuck out in her mind.

3 She talked about a time at the second green house,
4 how she was brought in her mother's room, a common theme,
5 amongst these instance. That he closed the door, that he
6 took her clothes off. She described a time period of time
7 this time about the defendant placing his penis inside of her
8 vagina before placing it inside of her anus.

9 It didn't stop there. She told us about a time
10 when she was doing laundry in her mother's room. A time when
11 she fell asleep during the laundry room. And she told us
12 when she woke up the defendant was there. That once again,
13 he closed the door, approached her, placed her on her back,
14 lifted her legs up, and put his penis inside of her anus.

15 Another time that she described at the green house.
16 A time that she was in the laundry room. A distinct time
17 that she remembers was a little bit different than the rest.
18 In the laundry room, she told us that the defendant came from
19 behind her, approached her, started to touch her, kissed her,
20 put her legs up on the machines and inserted his penis inside
21 of her anus.

22 Now, the abuse continued when she moved to the
23 two-story house. And it's around this time, the first time,
24 that Guadalupe had her own room. Stephanie had her own room
25 as well. And we heard system regarding the girls seeking to

1 place locks on those doors when they finally had their own
2 room and they were separated, as they got older.

3 And we heard the testimony that you didn't need to
4 be the world's best cat burglar to break into those rooms. I
5 think it was something to the effect of a penny could wiggle
6 those locks open.

7 And she described to us a time when she was in her
8 room with the door locked. But the defendant was still able
9 to enter that room. She told us that when he comes in the
10 room, he closes the door, takes off her clothes, touches her,
11 and once again -- and I'll use the words of the defendant
12 when he tells the police he was with her. He inserts himself
13 inside of her. He sexually assaults her again.

14 She described the time at the two-story house, when
15 she was invited into the room to watch a movie. She told us
16 at this time, the sister, Stephanie, was with her, and they
17 were watching a movie. But at some point in time, Stephanie
18 gets up and leaves. She tells us that once Stephanie leaves,
19 the defendant gets up and closes the door. He's got his
20 target alone in a room with the door closed.

21 He's got Guadalupe there, and she once again
22 described to us a time when he takes off her clothes, touches
23 her body, puts her legs up, and words the defendant used to
24 the police, he was with her. Well, penetrated her. Inserted
25 himself inside of her.

1 We know that sexual abuse lasted for years. It
2 ranged from once a week to three times a week. At some point
3 in time, the family eventually moves into what Guadalupe
4 referred to as the pale house on Ferguson Street as she gets
5 older. She talked about a time in 2015 around November, the
6 holiday season, right before she turned 14, the following
7 months in 2016. She talked about the last time she
8 remembered something happening, the last an act of
9 penetration happened.

10 And she told us, on this occasion she remembers the
11 defendant inviting her into the room. She remembers the
12 defendant telling her that he wasn't going to do anything and
13 that she believed him. That wasn't true.

14 He was doing something, and he did something. He
15 once again took off her clothes and put his penis inside of
16 her anus. He once again, sexually assaulted her. There's
17 something a little bit different about this incident that
18 Guadalupe told us, that Rosalba told us about, that Stephanie
19 told us about. Something a little bit different by Guadalupe
20 as she grew up throughout the years.

21 Guadalupe told us that prior to this incident, she
22 was growing up throughout the years, I believe she said it
23 started around when she was 11, 12, 13, those time periods,
24 that she had a conversation with a friend. That that friend
25 discussed what his sister was going through. The abuse that

1 his sister was suffering.

2 She also talked a little bit about a time period
3 and she told us that, I believe, it was school, they were
4 talking about right from wrong. She was watching the
5 Discovery Channel, and she started to realize as she got
6 older, that she, too, was the victim of sexual abuse. That
7 it wasn't okay what he was doing. That is wasn't okay what a
8 man she believed to be her father figure was doing.

9 And she told us she started to realize what was
10 going on. She started to realize she was a victim of abuse.
11 But Guadalupe told us she didn't tell anybody. Not at that
12 time. She didn't call the police. She didn't tell her
13 mother. She didn't tell her family. She didn't tell the
14 school counselor.

15 But why did she do that? She told us that she was
16 afraid of losing her mother. That despite the fact that she
17 was starting to recognize what was right from wrong, she was
18 still afraid of losing her mother. And we talked about this
19 in voir dire. And I'll bring that up throughout this time
20 that I'm speaking with you, that concept of children, why
21 they may not report things. What's going through their
22 minds? She told us she was afraid her mom would judge her.
23 She was afraid her mom would hate her. She was afraid to
24 come forward to her mother.

25 And that's why even though she started to realize

1 that this was wrong, she still did not report it. But what
2 did they do? She told us that she fought back. That
3 incident in 2015, she fought back. She pushed and pushed and
4 pushed. She told him to stop. She told him that she would
5 call the police if he did not stop. That was what she -- was
6 going through her mind. Not to tell the mother, but to fight
7 back. To tell him to stop when she realized what was going
8 on.

9 And what happened? She told us that the defendant
10 did stop for a period of time. That she was abuse-free for
11 several months. She told us that she felt safe after she
12 fought back. That she felt happy after she fought back. She
13 told us that she thought it was over.

14 Now we know that after that house, the Ferguson
15 Street house, the family eventually makes its way into the
16 Berkley Street house. We know that once again, everybody's
17 living there. And while living at the Berkley Street house
18 for a period of time, Guadalupe was still abuse-free.

19 That didn't last for long. It started again. And
20 it started with a touch. A couple weeks, I believe, one or
21 two weeks prior to the police arrival. It starts the exact
22 same way it started when she was five. This is a girl who
23 thought her efforts had stopped the defendant. This is a
24 girl who told him to stop, who pushed him, who told him that
25 she was going to call the police, and he did stop, and she

1 thought she was abuse-free.

2 But once again, that man starts again, just like he
3 did when she was five or six. It started once again with a
4 touch. And Guadalupe realized that this was not going to
5 stop, realized that this abuse was not over, realized what
6 that man had put her through throughout her childhood was not
7 stopping.

8 And when she makes contact with the police, she
9 decides to tell the police what happened after trying to
10 fight him off originally, to try to tell him no.

11 We know that in May of 2016, Guadalupe meets with
12 members of the District Attorney's Office in preparation of a
13 preliminary hearing. We know that Stephanie comes with her
14 sister and her mother. We heard from Ms. Leon, a member of
15 the District Attorney's Office. She told us that when she
16 saw Stephanie, she noticed that she was tense. She noticed
17 her body language, that she wanted to say something.

18 And Ms. Leon told us that she had handled hundreds,
19 if not thousands of pretrial conferences, met with several
20 people. And she remembers this incident, despite all those
21 other times, because of Stephanie. She asked Stephanie if
22 she wanted to talk, and Stephanie wanted to speak with
23 someone. Stephanie at that time was ready to talk about her
24 abuse.

25 Now, we know Stephanie didn't tell the police on

1 April 16th. We know that her incident she described
2 happening back when she was 12 at the, if I remember
3 correctly, the Stafford Street house years prior, and she
4 didn't tell anyone. Didn't tell her mother, didn't tell a
5 school counselor, she didn't tell the police when she was
6 asked on April 16, 2016.

7 But remember why Stephanie told us that. She told
8 us she had moved past it. She told us that she had gotten
9 married when the police were there. That her husband did not
10 know about this abuse. That she had moved beyond it. It was
11 beyond her. And she didn't want her husband to find out.

12 But in May of 2016 she was finally able to tell her
13 story. She was ready to. Able to talk about what happened
14 to her. And she tells the police and she told us what
15 happened to her. She described an incident that occurred
16 when she was at the Stafford Street house, when she was
17 around 12 years old. I believe she talked a little bit about
18 maybe being 13, too.

19 She discussed she was outside playing soccer with
20 some friends, I believe her brother was out there as well.
21 That she goes inside to get some water. She told us that no
22 one else was inside besides the defendant. That the
23 defendant approaches her. That the defendant tells her to
24 come inside his bedroom. That the defendant closes the door
25 and throws her onto the bed.

1 She talked about and told us that once inside, once
2 on that bed, the defendant gets on top of her, touches her
3 body, takes her soccer shorts off. And she asked the
4 defendant, why? Why? She knows that this is wrong. She's
5 asking him why he's doing this. The defendant places his
6 penis inside of her vagina, and he tells her why. He
7 responds to why. Because I want you. He told her I wanted
8 you. I wanted her. That's what -- or excuse me, Stephanie
9 told us.

10 We know that when it was over, Stephanie goes
11 outside and just sort of sits down, watches people play. She
12 eventually goes back inside, takes a shower. She told us she
13 didn't tell anybody. She didn't know why, but she didn't.
14 On April 16th she told us why she didn't tell the police.
15 She was married, she had moved past it, she didn't want her
16 husband to find out. She told us what happened to her at the
17 Stafford Street house.

18 Now, we ultimately know that on April 16, 2016, the
19 defendant is taken to the police headquarters. He's read his
20 Miranda Rights, he agrees to speak with police. And he
21 confessed to sexually assaulting Guadalupe. He told the
22 police that he raped Guadalupe. But it wasn't forcible rape,
23 just rape. Like, it's rape.

24 He tells the police that he touched her breasts.
25 He tells the police that an incident occurred when she was

1 eight years old, and he walks inside of her room, and he sees
2 her masturbating, and is just sort of, you know, well, with
3 her. He tells the police that he put his penis inside of
4 Guadalupe's anus. And he tells the police that he's telling
5 the truth, and he only put it inside her anus, just her anus.

6 Ultimately, the defendant is arrested for his
7 conduct, and he's charge with two counts of lewdness with a
8 child under the age of 14 and eight counts of sexual assault
9 with a minor under the age of 14.

10 So let's talk a little bit about what those counts
11 are and apply the facts that we know to be elements of the
12 law. But before we do that, I want to talk a little bit
13 about this instruction here. It's what I refer to as the
14 common sense instruction.

15 What this instruction does is it tells you that you
16 must bring into consideration of the evidence your everyday
17 common sense and judgment as jurors. What this instruction
18 does is it recognizes is that when you guys walk through
19 those two doors, you're not a blank canvass. You're adults.
20 You're people who have lived life. You're people who have
21 experienced life. You're people who know a thing or two.

22 And what this does, this instruction tells you, is
23 don't forget about that stuff. Don't forget about your
24 common sense when you deliberate. This instruction tells you
25 that you must use your common sense. So keep in mind your

1 common sense when we go through the facts of this case and
2 apply them to the elements, keep in mind when we talk about
3 the testimony that was presented, use your common sense,
4 ladies and gentlemen of the jury.

5 Counts one and counts two refer to lewdness with a
6 child under the age of 14. Count one is a time period she
7 talked about when the defendant brought her into the room at
8 the apartments and caused her to masturbate his penis. Count
9 two refers to the time period when she was in the apartment
10 when the defendant brings her into the room and discusses the
11 time period when he touched her breasts, her vagina, and
12 other buttocks.

13 So let's talk a little bit about what lewdness with
14 a child actually is. You are instructed that any person who
15 willfully commits a lewd or lascivious act other than the
16 acts constituting the crime of sexual assault upon or with
17 any part of the body of a child under the age of 14 with the
18 intent of arousing, appealing to, or gratifying the lusts or
19 passions or sexual desires of the defendant or that child is
20 guilty of lewdness with a child -- or excuse me, with a
21 minor.

22 This can be basically broken down into three parts.
23 Do we have a lewd or lascivious act? Was it upon or with any
24 part of the body of a child under the age of 14 and with a
25 specific intent? What was his intent or what was that

1 person's intent when they were touching the child? Was the
2 intent to appeal to their sexual desires, to arouse their
3 sexual desires, to gratify their sexual desires?

4 So let's talk a little bit about -- before we do
5 that, before we talk about count one, I want to talk a little
6 bit about these two instructions as well. You are instructed
7 that the law does not require that the actual lust, passions
8 or sexual desires of either such persons actually be aroused,
9 appealed to, or gratified.

10 Lewdness is a crime of intent. What's important is
11 what was going through that person's mind when the touching
12 occurred. What was his intent? It doesn't matter if that
13 person's sexual desires were actually gratified. Is was the
14 touching done with that intent? You are also instructed that
15 the bare skin does not need to be touched. It can be through
16 the clothing of a child, over the clothes touching of a
17 breast or buttocks or the genital area.

18 Let's talk about count one, lewdness with a child
19 under the age of 14. And this is the time period that
20 Guadalupe described to us when he brings her into the room
21 and she talked about it happening relatively quickly when she
22 first moved to Las Vegas in the apartments -- or the
23 apartment with the pool.

24 So do we have a lewd act? Well, the defendant
25 exposed his penis and told her to touch it. He didn't ask

1 her to touch his elbow. He didn't ask her to give him a
2 shoulder massage. He exposed his penis and he told her to
3 masturbate it. There's no if, ands, and buts about it,
4 ladies and gentlemen of the jury, that's a lewd act. When
5 you expose your penis to a child and you ask her to touch it,
6 you're committing a lewd act, and you're doing it upon or
7 with the body part of a child.

8 She told us that is she he showed her how to
9 masturbate his penis, and she did. She showed us on the
10 stand the movement that she was making, what he told her to
11 do and what she ultimately did. So it's using part of her
12 body. She told us this was a time period when she was under
13 the age of 14 when she was living in the apartments, when she
14 had first recently moved down within a year or two of Las
15 Vegas.

16 Now, ladies and gentlemen of the jury, everything
17 she described to us besides the incident that occurred prior
18 to the week or the weeks prior to the police coming was --
19 occurred when she was under the age of 14. She turned 14 in
20 2016. Everything charged, of course, prior to that date,
21 everything she described, of course, prior to that date. So
22 this isn't a question of whether she was 14 or 15 or 16. She
23 was under the age of 14 during that time period.

24 What is his intent? How do we determine his
25 intent? Well, ladies and gentlemen of the jury, it wouldn't

1 be much of a job for a person to do in my line of work if
2 every time someone comes in and describes at the top of their
3 lungs what their intent is. I am having this person touch my
4 penis to appeal to my sexual gratifications. I wouldn't have
5 much of a job if that's the way it happened.

6 So we look at the facts and circumstances
7 surrounding what happened. A closed door, in a room with a
8 child. What does he ultimately do? He ejaculates on his --
9 on her chest. We know what his intent was. We know the
10 minute he exposed his penis what his intent was with that
11 child. He committed count one.

12 Count two refers to the time period in which she
13 described that he invites her into the room in the
14 apartments, touches her buttocks, and her vaginal area, and
15 her breasts. So do we have a lewd act? Well, using her
16 hands to touch those areas of a child is a lewd act. It's
17 not the elbow, it's not the arm, it's not holding hands in
18 the back room right there. He's touching her breasts.

19 She told us on the stand, she described how he
20 would cup and touch her breasts, how he would do that.
21 Remember that when going through your deliberations and going
22 through her testimony. She showed us how he would cup her
23 breasts, how he would touch her. We know it's part of her
24 body because she told us he touched her body. Her breasts,
25 her buttocks, her genital area.

1 So what was his intent? Location, location,
2 location. If I've said it once, I've said it a thousand
3 times today, he's not touching her elbow, they ain't holding
4 hands, he's touching her vagina. He's touching her breasts.
5 He's touching her buttocks. How do we know what his intent
6 was? Because of the areas that he's touching. It's not a
7 medical exam. He's not bathing Guadalupe. He's undressing
8 letter. He's fondling her, he's touching her in those
9 specific areas. We know what his intent was because of the
10 acts that he committed. He committed count two.

11 Now, counts three through ten refer to sexual
12 assault of a minor under the age of 14. You are instructed
13 that a person who subjects another person to sexual
14 penetration against their will or under conditions in which
15 the perpetrator knows or should have known that the victim
16 was mentally or physically incapable of resisting or
17 understanding the nature of the conduct is guilty of sexual
18 assault.

19 Sexual penetration includes any intrusion, however
20 slight, of the part of the person's body inserted by a person
21 into the genital or anal openings. You are instructed that
22 sexual intercourse is the intrusion, however slight, of the
23 person's penis into the genital opening. Anal intercourse is
24 the intrusion, however slight, of a person's penis into the
25 anal opening of another person.

1 Now, it's important to talk a little bit about
2 these instructions before we talk about the facts as they
3 occurred. You are instructing that physical force is not
4 necessary in the commission of sexual assault. The crucial
5 question is not whether a person physically forced to engage
6 in sexual assault but was committed without his or her
7 consent or under conditions in which the defendant knew or
8 should have known that that person be was incapable of giving
9 consent.

10 You're also instructed that a person is not
11 required to do more than his or her age, strength or
12 surrounding facts to make it reasonable for them to manifest
13 opposition. Why would these instructions exist? Why is this
14 the law? Think about when we talked during voir dire. There
15 was a member of the panel who said, it's child. It's not a
16 child's responsibility to say no. It's the adult.

17 We talked a little bit in voir dire about why a
18 child may not know what is going on, may not know that this
19 is wrong, maybe told by their abuser that this is okay. A
20 person that they trust. A person that they live with. A
21 person that they know. A person that is dating their mother.

22 So this is why you take into consideration as to
23 whether or not that person's age, and it's not necessary for
24 physical force.

25 Count three refers to the time period that she

1 described that it either occurred at the apartment with the
2 pool or the green house, all well before she was under the
3 age of 14. This is one of the first houses that she lived
4 in, she moved out here in five or six. She goes there, the
5 apartment was a pool to the next house. She's young. She's
6 a child. She's not even in her preteens.

7 Rosalba walks us through the ages, the years that
8 they lived there. She described the incident that he inserts
9 his penis inside her anus. Is it against her will? She's a
10 kid. Told her it was okay. She didn't know what was going
11 on. She's not able to give consent. She has no idea what's
12 going on. He committed count three. That man put his penis
13 inside of Guadalupe's anus.

14 Count four refers to the time at the green house
15 that she demonstrate -- that she told us about the time when
16 she was on her knees on the floor. Again, puts his penis
17 inside her anus. She's a kid.

18 Count five, second green house, the mother's room.
19 The incident that occurred in the mother's room. And a lot
20 of incidents occurred in the mother's room, a lot. She
21 described that a lot. But there were sometimes when it's a
22 little bit distinct from what happens in other parts of the
23 house. Once again, he inserts his penis into her anus.
24 She's a child.

25 So I'll go back. Count six, second green house.

1 The time period that she described in the laundry room when
2 he approaches from behind her and lifts his legs up on the
3 machine and inserts his penis inside of her anus. She's a
4 kid. His penis went inside her anus. She told us -- every
5 time she described something that happened during that his
6 penis went inside her anus.

7 The two-story home, count seven, in a room, the
8 incident that occurred when the door was locked, and he's
9 still able to break in because that lock's -- it's not good.
10 It's not a good lock. Didn't keep him away. She's a kid.
11 She described the incident, penis inside her anus.

12 Count eight refers to the genital opening, second
13 green house in the mother's room. This time when she
14 described the time period, first time she remembers him
15 putting his penis inside her vagina before ultimately placing
16 it inside of her anus again. There's no ifs, ands, or buts
17 about it, put your penis in an anus of a kid, put your penis
18 in a vaginal area of a kid that young, you've sexually
19 assaulted them. They don't know what's going on. They're
20 not capable of giving consent. They're not required to do
21 more than what their age and circumstances suggest that they
22 do to a man that they trust, a man that was with their
23 mother, a man who was in their lives on a daily basis.

24 Count nine, again that same time period -- or no,
25 excuse me, two-story home in the mother's bedroom. She

1 described it, penis in the anus, she was under the age of 14.

2 Ladies and gentlemen of the jury, there's no ifs,
3 ands, and buts about it, if you believe Guadalupe, if you
4 believe that she's telling us the truth beyond a reasonable
5 doubt that those things occurred, and you believe that he
6 inserted his penis into her anus, and he inserted his penis
7 into her vagina, if you believe what the defendant told the
8 police that he did, then he's guilty of counts one through
9 nine.

10 Count ten refers to Stephanie, who we have listed
11 as Darey, DA. She told us about that time period. The
12 incident that occurred in the Stafford house when she was 12
13 years old. She described and walked us through what happened
14 to her. Throws her onto the bed. She told us that he
15 inserts his penis into her vagina. That she's under the age
16 of 14 when that occurs, against her will.

17 And we talked a little bit about as a person gets
18 older. As a teenager gets there, that they -- it was a
19 concept we talked about in voir dire -- that they should
20 start -- around that time, I think, the entire panel agreed
21 that they should start recognizing right from wrong. What
22 did Stephanie tell us happened during this time period? She
23 was thrown on that bed, her shorts were removed, and she kept
24 asking him why. That's not consent. That's why. Why is
25 this happening to me? Why are you doing this to me?

1 What was the defendant's response to her? What did
2 she tell us? Because I want you. He committed counts one
3 through ten.

4 I want to talk briefly about this where multiple
5 sex acts occur as a part of a single criminal encounter, the
6 defendant may be found guilty of each separate or different
7 act of sexual assault or lewdness; however, when the sex acts
8 occur as part of a same episode, the defendant may be found
9 guilty of only one of the sexual assaults, unless those three
10 things happened, one of those three things. There's an
11 interruption between the acts of the same specific type. So
12 what we mean by the same specific type is if every time
13 someone inserts their penis into the vaginal area of a kid,
14 if they take it out, put it back in, take it out, put it back
15 in within a matter of seconds, that's not 16 different counts
16 of sexual assault. That's the same specific conduct with
17 really no interruption.

18 But where there's a gap in time, like Guadalupe was
19 telling us about, in the apartments, in the houses, in the
20 green house, in the two-story house, he could be found guilty
21 of each of those gaps in times if you believe that they
22 occurred beyond a reasonable doubt.

23 Now, when there are acts of the same specific time
24 are interrupted by different specific things for each
25 (indecipherable) manipulated. Now, if you remember

1 Guadalupe's testimony here, the time period in which he
2 described different acts of the same conduct, the same type,
3 she described two types of lewdness that are charged; the
4 touching of the breasts and the touching of the penis. And
5 my understanding those occurred on different times. But
6 they're also distinct conducts. Penis, breasts, different
7 areas, but different times.

8 So there's an interruption between those acts.
9 Different times, different incidents, different crimes. A
10 lot of the counts also refer to different times, each
11 associated with a house or a room with inside that house such
12 as the laundry room, the mother's bedroom, the bedroom. Time
13 periods that she remembered that is distinct from different
14 time periods, such as she wakes up -- or invites him to a
15 movie or is folding laundry and falls asleep. All different
16 time periods that she described.

17 So I want to bring this to your attention because
18 there was one time period in which she described vaginal
19 intercourse that then ultimately led to anal intercourse in
20 the same incident in her mother's bedroom.

21 If I go back, the second green house in the
22 mother's room. Now, she talked about a time period before he
23 ultimately inserted his penis inside of her anus that he
24 inserts his penis inside of her vagina. So that's the same
25 act, the same criminal encounter, but it's not the same

1 specific type of sexual conduct, like I talked about here.
2 If he removes his penis back and forth, that's not one count,
3 two counts, three counts. But if you put your penis in
4 someone's vagina, and then you put your penis in someone's
5 anus, that's different conduct. Those are different charges.
6 So just keep that in mind when you're going through this
7 instruction and you're deliberating.

8 You're also instructing that when multiple counts
9 are charged, the alleged victim must testify with some
10 particularity regarding each incident. There must be some
11 reliable -- something reliable there. But the State's not
12 required to prove a specific date. Keep that in mind, but
13 there must be some reliable indication that these all crimes
14 occurred.

15 If Guadalupe got up here and described one time,
16 you know what, ladies and gentlemen of the jury, Guadalupe
17 says to us, he put his penis inside my anus when I was inside
18 my mother's room, and I think that happened 30 times, no,
19 there's not 30 counts for that. That's one count.

20 But when she's able to describe separate houses,
21 able to describe separate positions, like we talked about in
22 counts one through ten, able to describe a laundry room, able
23 to describe different leads up to the act, it doesn't matter
24 that he committed the crimes in the exact same way pretty
25 much every time that he would take off his clothes and put

1 his penis inside her anus because there's a reliability
2 because she's able to describe distinct houses. She's able
3 to describe distinct rooms inside those house, whether she's
4 on the knees or on the bed, lifted legs up.

5 So just keep those in mind when you're going
6 through these instructions.

7 Now, ladies and gentlemen of the jury, we know why
8 we're here. I said it once already during these statements
9 here. That if you believe Guadalupe and Stephanie, he's
10 guilty. That's the question. Do you believe them beyond a
11 reasonable doubt? Do you believe that the defendant's
12 confession was voluntary beyond reasonable doubt?

13 So let's talk a little bit about the credibility of
14 those witnesses. You as jurors have the ultimate decision to
15 judge the credibility and the believability of a witness.
16 That's left for you guys, something that you guys will take
17 into consideration when deliberating.

18 So I want to talk a little bit about it. But you
19 are instructed that the credibility or believability of a
20 witness is based on, among other things, their motives, their
21 interests, their feelings, their opportunities to observe the
22 matter.

23 But I want to talk about this instruction at the
24 bottom. There is no requirement that the victim of sexual
25 assault be corroborated. Their testimony standing alone, if

1 believed beyond a reasonable doubt, is sufficient to sustain
2 a verdict of guilt in State of Nevada.

3 And we talked about this in voir dire why that is.
4 We talked about the concept that these crimes occur in
5 secret, behind closed doors where no one else is around, when
6 sometimes the only person who knows what happened is the
7 victim. The only person who saw what happened is the victim.

8 And so we talked about that in voir dire. And this
9 instruction recognizes that these are different types of
10 crimes. That they occur behind closed doors. So it says
11 that if you believe what Guadalupe and Stephanie told us
12 beyond a reasonable doubt, you could find the defendant
13 guilty. It doesn't need to be corroborated.

14 So let's talk about credibility. When I talk about
15 credibility, I mean demeanor, consistencies, their
16 descriptions, their motives. So what about their demeanor?
17 You as members of the jury have the opportunity to observe
18 Guadalupe and Stephanie on the stand, when they told us what
19 happened to them. When you keep in -- I want you to keep in
20 mind when you discuss their credibility, when you talk about
21 their credibility, what they were having to talk about and
22 who they had to talk about it in front of.

23 We talked about this in voir dire. It's a
24 difficult subject matter to talk about in front of strangers.
25 I'm not good at math, but I think there's 13 of you, 13

1 strangers. 20 feet away from their abuser. Keep that in
2 mind.

3 You have the opportunity to observe their emotion
4 when they described what happened to us. Excuse me, what
5 happened to them, when they told us about what happened to
6 them. You had the opportunity to observe their demeanor, the
7 emotion 20 feet away from their abuser in a room full of
8 strangers.

9 But I want to talk a little bit about another
10 aspect of the demeanor that I think is important to take
11 consideration. And this is something that was brought up in
12 voir dire, I believe, by the defense counsel. I think the
13 entire panel agreed that as a person gets older, they should
14 be able to distinguish right from wrong. They should be able
15 to know that something is wrong, and I think the panel came
16 to the conclusion that it occurs in the teenage years, maybe
17 the preteen years, 13, 14, 12. I'll be -- in the sake of
18 being safe, I'll be broad, 11 to 14. It was around that time
19 period as when people should start recognizing what is
20 happening to them is wrong.

21 And be we all agreed as a panel that that likely be
22 true. That a 14-year-old should know what's happening when
23 you compare it to a seven-year-old or a six-year-old or a
24 five-year-old. So keep in mind what Guadalupe was doing as
25 she entered those years.

1 Rosalba told us the changes that she noticed in
2 Guadalupe. Stephanie told us the changes she noticed in
3 Guadalupe. Guadalupe told us the changes. She got upset
4 easily. She started becoming aggressive. She started
5 dressing in black, wearing long sleeves, covering her body.
6 She became reserved and quiet. She wasn't talkative. She
7 spent time locked up in her room. She was not herself. This
8 started occurring around the Ferguson Street house, around
9 the time period Guadalupe told us that she started to realize
10 what was going on through the Discovery Channel and that
11 friend that she talked to online about the abuse of his
12 sister.

13 Keep that in mind when you're judging Guadalupe's
14 demeanor. Her change in personality. Rosalba told us on the
15 stand that she thought this was typical teenage behavior,
16 that she thought her daughter adopting this, I think it was
17 Gothic lifestyle or this being drawn towards Goth culture was
18 typical teenage behavior.

19 And we asked her on the stand in hindsight what she
20 thought. She agreed. Knowing what she knows now, she sees
21 it.

22 This was an individual who as she got older, as she
23 realized what was going on was retreating, was withdrawing,
24 was trying to make herself less appealable to her abuser, was
25 trying to avoid her abuser, trying to cover up, thinking to

1 herself maybe this is how I get him to stop. I dress in
2 black, I become Gothic, I cover my entire body, I lock myself
3 in the room. Keep that in mind when you're discussing
4 Guadalupe's demeanor, the shift in her personality as she
5 started to realize what was going on, as she started to
6 realize what was going on was wrong.

7 I think it's important to talk a little bit about
8 the descriptions Guadalupe gave us as well. Guadalupe on the
9 stand, she demonstrated how he would touch her body. She
10 showed that to us. She demonstrated how he instructed her to
11 masturbate his penis. She showed that to us. She described
12 ejaculation. She described the lifting of her legs. She
13 described distinct times that stood out.

14 This wasn't a girl who came in here and said, he
15 did X, he did Y, that happened a bunch of times. This was a
16 girl who came in here said he did this a bunch of times,
17 sometimes three times a week for a period of years, these are
18 the times I remember, the laundry room, when I was doing
19 laundry, when he put his leg on the machines in the laundry
20 room. I already said that. The mother's bedroom, her
21 bedroom, the different houses.

22 We talked a little bit about that in voir dire.
23 And by sides the accountant, who has the best memory in the
24 world, we talked a little bit about the time you met your
25 significant other, your partner, your husband, your wife.

1 And I think the panel agreed that yeah, you'd remember that
2 incident, but you wouldn't remember every single detail about
3 it. And when I was talking with, I believe, one of the
4 members of the panel, that sometimes you would tell the story
5 differently. Depending on the day, you may include one thing
6 one day, not include it the next time you tell that story.
7 But the general gist, the important thing is what you know.
8 You remember specific things, distinct things that separate
9 it.

10 She talked about how it happened to often. But she
11 described distinct times that stood out from the rest. Keep
12 that in mind, her ability to describe what happened, her
13 ability to demonstrate to us what happened, how he did
14 certain things.

15 So I touched upon this briefly, but the
16 consistencies. I'm not going to stand before you and tell
17 you that Guadalupe is the most consistent person, that she
18 had everything memorized, script, so to speak, she came in
19 here and spoke like a robot on Thursday, October 15th, this
20 happened, two weeks later this happened. No, that's not --
21 we talked about that.

22 She said it happened three times a week for a
23 period years, that it started when she was around five years
24 old. Do you think she's going to remember every single
25 detail? Think about what we talked about in voir dire. Do

1 you think she's going to remember that sometimes he touched
2 her vagina before he put his penis inside her anus or that he
3 touched her right boob or her left boob or he gave her a kiss
4 before he inserted himself inside of her, to use the words of
5 the defendant, before he was with her? No.

6 What did she do? She remembered the pain. She
7 remembered how it made her feel. She remembered what her
8 family would think of her. She remembered that when she
9 started to fight back and it didn't stop, that this was not
10 going to stop. Do you remember that it happened on a Tuesday
11 and you were wearing a red shirt and it was 4:45 in the
12 afternoon? You remember the pain, ladies and gentlemen of
13 the jury. You remember how things make you feel. You
14 remember how thinking what other people would think of you.
15 That's why you weren't telling anybody that this happened or
16 why this would happen to you. That's what you remember. You
17 remember the pain.

18 And she told us, she described to us what happened
19 to her, she described to us how she was afraid to lose her
20 mother, how she thought her mother would hate her.

21 What was she able to describe? First time he
22 touched her. First time he made her grab his penis. The
23 first time he put his penis in her anus when she was on her
24 knees on the floor, when she fell asleep doing laundry, when
25 she was in the laundry room, when he first entered her own

1 room to sexually assault her. The last time when she told
2 him to stop, and when she knew it was not going to stop.
3 Distinct times.

4 Compare that to Stephanie, a one-time incident.
5 Now, Stephanie remembered the house. She remembered how old
6 she was. Around the time period of how old she was. She
7 remembered being called into the room. She remembered being
8 thrown onto the bed. She remembered what he did to her.

9 Now, Stephanie doesn't remember every specific
10 detail about what happened that day. But she remembers what
11 he did to her. She remembers the pain at that caused her.
12 She remembers how it made her feel. She remembers what that
13 man said to her, I want you, while his penis is inside of her
14 vagina when she's a child.

15 Think of the consistencies of Stephanie, what she's
16 able to describe to us about what's going on.

17 Now, I want to talk a little bit about defense
18 theories. These are things that I picked up, I believe,
19 during opening statements and throughout the course of trial
20 of cross-examination and their witnesses. The first one I
21 want to describe is what I refer to as the motive. During
22 opening statements, defense counsel told us that Guadalupe
23 wanted the defendant out of the house because her siblings
24 were moving because of him.

25 So Stephanie and Mael were moving because of the

1 defendant, and she wanted them out of the house so they would
2 stay. What evidence did we hear of that? We know when the
3 police arrive, Rosalba told us that Guadalupe speaks to them
4 within minutes. Officer Murray told us that no final
5 determination had been made by the time Guadalupe speaks with
6 them.

7 Guadalupe doesn't know what's going on. The police
8 are there because of an incident that doesn't even involve
9 her. No idea why the police are there. The defendant agreed
10 with police that she wasn't involved in the incident and had
11 nothing to do with that.

12 So what motive? She doesn't know that the
13 defendant's not going anywhere at that time. It's within
14 minutes of the police arrival. She doesn't know why the
15 police are there. She doesn't know the defendant's not -- or
16 is not being taken away by the cops that day.

17 What happened? Her sister and her brother moved
18 out anyways. A little bit later than usual, but her sister
19 testified that she moved out in September. April, May, June,
20 July, August, September a couple months. No. What motive is
21 there to keep her siblings there when they were moving out
22 anyways, and they ultimately did move out anyways? Guadalupe
23 lives alone with her mother right now.

24 This happened in April of 2016. We are three and a
25 half years removed from when that so-called motive existed.

1 And yet, she's still here in court talking about being
2 sexually assaulted by a man that she trusted to a group of
3 strangers. Motive for three and a half years? No, folks.
4 Use your common sense. She's talking about what happened
5 because it happened to her.

6 So motive do we have for Guadalupe to say what
7 happened to her? We heard from Stephanie that she and her
8 brother, Mael, were moving out because, guess what, that's
9 what people do when they get married. That's what people do
10 when they grow up. They start their own family. They move
11 down the street. They move to a different neighborhood so
12 they can start raising their own family and start living
13 their own life. That's what happened. It wasn't because of
14 him.

15 It was because, hey, man, I'm married, my brother's
16 married. Maybe we should get our own place. That's what
17 they wanted to do.

18 Her motive to tell the police on April 16, 2016 was
19 the fact that she was going to be left alone with that man.
20 Remember that she told us that in November of 2015, she
21 fought back and she was abuse free for a few months, but then
22 it started again, just like it did when she was five.

23 She thought the abuse had stopped, it didn't stop.
24 That man was not going to stop. That was her motive. Her
25 motive was to protect herself. Her motive was to get help.

1 She tried to fight back. She thought that was the way to go.
2 When that did not work, she asked for help. She went to law
3 enforcement, she went to the police.

4 Another theory that I picked up on is
5 inconsistencies. Now, there was a lot of discussion with
6 Officer Murray regarding the police report, his initial
7 police report. And his police report was read, excuse me,
8 into the record, a sentence of it. The one I want to focus
9 on is the last time something happened about a week ago.

10 Defense said in their opening statements that she
11 disclosed vaginal intercourse a week prior to the police
12 arriving. And they said that when she found out there was
13 going to be a medical exam, it's at that time she changed her
14 story. Two things. There's no testimony, no evidence other
15 than --

16 MS. HOJJAT: Objection.

17 MR. ROWLES: -- that police report.

18 MS. HOJJAT: Could we approach?

19 (Bench conference begins)

20 MS. HOJJAT: Your Honor, the State repeatedly is
21 referring to defense theories and saying no evidence. This
22 is burden shifting. If they want to talk about there's no
23 evidence in X, Y, or Z, that's one thing. But framing it as
24 a defense theory and then saying there's no evidence.

25 THE COURT: Yeah, I agree.

1 MR. ROWLES: So just don't say no evidence?
2 THE COURT: Yeah. Yeah, just say there's no
3 evidence.
4 MR. ROWLES: Okay. That's -- I think it's the
5 first time I've said no evidence.
6 THE COURT: Because I don't want to --
7 MS. HOJJAT: No, it's not.
8 MR. ROWLES: Okay.
9 THE COURT: I will just limit it to that.
10 MR. ROWLES: Do you want me to --
11 THE COURT: Just say the evidence.
12 MR. ROWLES: Okay.
13 THE COURT: Don't [inaudible] -- don't shift the
14 burden --
15 MR. ROWLES: Okay.
16 THE COURT: -- over to the defense.
17 MR. ROWLES: You got it.
18 THE COURT: Okay.
19 (Bench conference concluded)
20 MR. ROWLES: So there was that part in the report
21 about vaginal intercourse happening a week prior. What
22 evidence do we have? Guadalupe said that that didn't happen.
23 The officer told us that he was describing trying to get down
24 a general time period when he wrote that aspect of the
25 report.

1 What Guadalupe tell Detective Pretti? She talked
2 about an incident that occurred a week prior, a touch, but
3 not penetration. She talked about penetration happening
4 several months prior.

5 So let's think a little about that. The medical
6 exam, that she was changing her story. Guadalupe knew what
7 the results of a medical exam was going to be? Guadalupe
8 knew what an acute versus a non-acute exam was? Guadalupe
9 had to change her story? She was like, oh, I got to make
10 sure that Dr. Cetl can talk about normal is normal. I got to
11 make sure that I change penetration to a time period after
12 acute injury. No, folks. Use your common sense.

13 She doesn't know who Dr. Cetl is. She doesn't know
14 95 percent of exams are normal. She doesn't know the
15 difference between acute and non-acute. She never told the
16 police that penetration occurred a week prior.

17 MR. FELICIANO: Objection. That misstates the
18 testimony that we heard.

19 MR. ROWLES: No.

20 THE COURT: Overruled. You may proceed.

21 MR. ROWLES: So the inconsistencies. Talk a little
22 bit about Guadalupe's conduct. They talked a little bit this
23 in voir dire. They referenced this in their opening
24 arguments. Referring to Guadalupe as a teenager, that she
25 did not know what was going on but she was a teenager?

1 It started when she was five. Her demeanor changed
2 when she was a teenager. Her demeanor started to change in
3 her preteen years. She started to recognize right from
4 wrong. And what does she do? Retreats. She tries to avoid
5 -- she tries to lock herself in the room. She changes her
6 personality, she starts dressing differently, and she
7 ultimately finally tells him to stop. He did not stop. And
8 what does she do? She calls the police.

9 So when we talk about --

10 MR. FELICIANO: Objection. That misstates the
11 testimony. Guadalupe never testified -- that she called the
12 police.

13 MR. ROWLES: The police come to --

14 THE COURT: Objection is sustained.

15 MR. ROWLES: -- thing and she tells the police.
16 She didn't call the police. She comes -- she tells the
17 police.

18 So when you think about Guadalupe's conduct, think
19 about the concepts that we discussed in voir dire and the
20 testimony that we heard regarding her change in personality,
21 her fighting back, her ultimately telling the police. That's
22 a typo. She never called the police, she spoke to the police
23 when they were there.

24 Something else we heard about was protecting her
25 little sister with regards to Stephanie. That Stephanie made

1 this up to protect her little sister right before her
2 sister's statements were going to be cross-examined for the
3 first time. What did Stephanie tell us as to why she came
4 forward when she did? And why she didn't come forward back
5 in April or before that.

6 She had moved past that. She did not want her
7 husband to find out. And this whole concept that her
8 statements were going to be scrutinized, well, they were
9 scrutinized back then and three years later by good defense
10 attorneys, they're scrutinized again.

11 MS. HOJJAT: Objection. Disparaging the defense.
12 If we can approach.

13 (Bench conference begins).

14 THE COURT: Okay. Who's doing closing?

15 MR. FELICIANO: Oh, I'm sorry.

16 THE COURT: Okay. Then only you can object.

17 MR. FELICIANO: Okay.

18 MS. HOJJAT: I apologize. Your Honor, there's case
19 law directly on point about referring to defense attorneys as
20 good defense attorneys as an attempt to diminish the defense.
21 We're moving for a mistrial at this point. There been
22 numerous framing of her theories of the case that are not
23 quite accurate of what we were arguing during our opening and
24 what was said during our opening and what we've been arguing
25 during the case. At this point, they've disparaged the

1 defense, burden shifted, we're moving for a mistrial.

2 MR. ROWLES: I don't think I've burden shifted at
3 all by discussing the fact that they made comments in their
4 opening statements that this is what would happen. I'm
5 allowed to comment on the fact that what they argued in
6 opening statements was not borne out by the evidence.

7 I think what I've argued with regards to defense
8 theory is taken directly from their opening statements and
9 I'm commenting on it.

10 THE COURT: [Inaudible].

11 MR. ROWLES: With regards to good defense
12 attorneys, I don't know how that's disparaging to the
13 defense.

14 MS. HOJJAT: There's case law directly on point
15 about referring to defense --

16 THE COURT: Okay. Just don't refer to --

17 MR. FELICIANO: Yes.

18 THE COURT: -- them as being good or bad or
19 anything. So you may proceed, and your motion for a mistrial
20 is denied.

21 (Bench conference concluded).

22 MR. ROWLES: Well, her statements were still
23 scrutinized and scrutinized three years later. So this whole
24 thing about protecting her sister, coming forward to protect
25 her little sister, no. She told us why she came forward.

1 She was ready to talk about it. She was ready to see him
2 suffer the consequences for what he did to her.

3 No investigation. There was talk about a friend
4 who saw a hug. Detective Pretti said he's not going to track
5 down every single person who sees someone give a hug, a step
6 dad to a stepdaughter or someone who's involved in a life.
7 Track down witnesses who saw holding hands or put his arm on
8 his shoulder at the grocery store. The online friend didn't
9 get a disclosure.

10 The exam for constipation. Detective Pretti told
11 us that he would consult with people. That he would have
12 looked into it. Keep in mind what Dr. Cetl told us. That
13 that constipation exam would have not have been as thorough
14 as her exams for sexual assault.

15 Do not live in the houses anymore. These things
16 occurred five, four, three years prior. They weren't living
17 there anymore. Take a photograph of the front door. Use
18 your common sense, folks.

19 So I want to talk lastly about the confession. Low
20 IQ. We heard Dr. Harder's exam. 61, I believe was the
21 number. Well below the 70 average.

22 MS. HOJJAT: Objection. Misstates the testimony.

23 THE COURT: Overruled. You may proceed.

24 MR. ROWLES: Low IQ. Low IQ equals falsely
25 confessing to penetrating your girlfriend's daughter. I want

1 to talk a little bit about that exam. You heard from
2 Dr. Roley concerns we had. No effort testing was done on
3 that exam.

4 He used an English exam and translated it to a
5 Spanish. You heard Dr. Roley's concerns that she had with
6 how Dr. Harder performed that exam and the reliability of the
7 number that he gets. So keep that in mind when you're
8 discussing the voluntariness of the defendant's confession,
9 something that you have to determine if you can use it.

10 But let's just accept the fact that that's where it
11 is, for the sake of argument. Dr. Harder told us that even
12 without that, even with a low IQ, that doesn't mean a
13 person's always going to be coerced and manipulated, always
14 going to be tricked. It depends on the facts and the
15 circumstances. It depends on the questions being asked. It
16 depends on the person.

17 We heard testimony that the defendant was a welder
18 the entire time he was working, a welder. I wasn't working
19 at McDonalds. Hewas a welder that entire time. He told the
20 detectives that he paid the bills. The defendant was able to
21 walk, talk, function. He worked as a welder for a great
22 period of time, years while they were living together.

23 So even if we accept the IQ as-is, the interview
24 speaks for itself. You will have the opportunity to look at
25 that interview again. It's only 20 minutes long. It speaks

1 for itself when you determine the voluntariness of that
2 statement.

3 High blood pressure, medical concerns equals
4 falsely confessing to penetrating your girlfriend's daughter?
5 He was told that if he needed medical attention he would
6 receive it. He agreed to those terms. Detective said EMT,
7 translator said ambulance. Come on. Common sense, folks.
8 He was told that if he needed medical attention, he would
9 receive it.

10 He asked the detective for a pill. But what did
11 Rosalba tell us? That he took a pill in the morning. High
12 blood pressure. What did Mr. Duke tell us? It's not unusual
13 for people who have been arrested. This man had just been
14 arrested for sexually assaulting a minor. Come on, folks.
15 We talked about this in voir dire. There was a member of the
16 panel who said she was nervous and thought she was having
17 anxiety attack just answering questions back and forth in
18 this room. Answer questions about your job, stuff like that.
19 She was nervous during that situation. Could you imagine if
20 you've been arrested for these crimes?

21 There was discussion regarding that the confession
22 was not consistent. Well, the defense said he was
23 embarrassed, that he felt terrible. Told the police that.
24 We talked about it in voir dire how difficult of a topic this
25 is to talk about. How difficult of a topic this is to tell a

1 police officer that you did these things to a girl.

2 But what's not consistent? The fact that he
3 doesn't admit to multiple things? Guadalupe said that he
4 touched her body and put his penis inside her anus. The
5 defendant told police that he touched her body and put his
6 penis inside of her anus. Come on, folks.

7 I don't think this is the exact same. I think it's
8 a pick is worth a thousand words, but a video is worth a
9 thousand words, too. When you determine the voluntariness of
10 that statement, look at the interview. Look what the
11 detective's doing. Look at the questions that are being
12 asked. Look at his responses. Look at his demeanor, hear
13 his voice.

14 The defendant did not know why he was there. The
15 defendant expressed frustration with the situation.
16 Expressed that he loved and took care of those girls. The
17 defendant was able to retell an event. That same day told
18 the cops about what happened and why the police were there.
19 The defendant introduced the word touch. The defendant
20 introduced the word breasts. The defendant introduced the
21 sexual conduct in that interview.

22 The defendant introduced penetration. The
23 defendant introduced the term rape. The defendant told the
24 detective, like, it was rape, but it wasn't forced. The
25 defendant clarified that it wasn't forceful rape, excuse me.

1 He expressed embarrassment. He denied specific conduct. He
2 was given a choice, vaginal, anal, somewhere else. Just her
3 anus. Just her anus, ladies and gentlemen. I only
4 penetrated her anus.

5 He recognized the consequences. If I have to pay,
6 I have to pay. He told the detective that he was telling the
7 truth. When you look at this video, it speaks for itself.
8 Guadalupe told police what happened. She told us what
9 happened. Stephanie told police what happened. She told us
10 what happened. The defendant told police what happened.

11 Now it's time for you guys to tell the defendant
12 something. That you know what happened. He sexually
13 penetrated those girls. Find him guilty, ladies and
14 gentlemen of the jury. Find him guilty.

15 THE COURT: Thank you. At this time, we're going
16 to take a recess.

17 During this recess, you're admonished not to talk
18 or converse among yourselves or with anyone else on any
19 subject connected with this trial, or read, watch, or listen
20 to any report over commentary on the trial, or any person
21 connected with this trial by any medium of information,
22 including without limitation, newspapers, television, the
23 Internet, or radio, or form or express any opinion on any
24 subject connected with this trial until the case is finally
25 submitted to you.

1 We'll be in recess for ten minutes. Thank you.

2 THE MARSHAL: Thank you. All rise for the exiting
3 jury, please.

4 (Court recessed at 12:05 p.m. until 12:16 p.m.)

5 (Outside the presence of the jury.)

6 THE COURT: Okay. The record will reflect that the
7 hearing's taking place outside the presence of the jury
8 panel. Go ahead.

9 MS. HOJJAT: Thank you, Your Honor. And we moved
10 briefly at the bench, but I know the bench doesn't always
11 record everything well, and so we --

12 THE COURT: It does, and there -- and they are
13 transcribed --

14 MS. HOJJAT: Oh, are they?

15 THE COURT: -- the bench conferences, uh-huh.

16 MS. HOJJAT: Oh, okay. We did move for a mistrial
17 at the bench, and I just wanted to move again and expand our
18 record.

19 THE COURT: Okay.

20 MS. HOJJAT: We said at the bench the -- at that
21 point, there were multiple instances in which the State had
22 characterized the defense theory of the case as one thing and
23 then submitted to the jury that there was in evidence of what
24 they had characterized the defense theory of the case being.
25 And we had objected to burden shifting, which I believe the

1 Court did sustain the burden shifting objection.

2 Then at one point the State made reference to
3 essentially the defense attorneys being good defense
4 attorneys, disparaging the defense, basically, suggesting
5 that we're playing lawyer games here. That our defense is
6 because we're good defense attorneys, which --

7 THE COURT: Okay.

8 MS. HOJJAT: -- there's case law directly on point
9 commentary on the capability of defense counsel to suggest
10 that that's what's going on here is inappropriate. And so we
11 did move for a mistrial at that point bringing in all the
12 prior instances of the characterization of our defense and
13 the commentary on there being a lack of evidence of what they
14 characterized the defense as.

15 We also brought up at the bench that some of the
16 characterizations of our defense that have been made -- that
17 were made during the State's closing were not accurate
18 characterizations of our defense. For example, it was said
19 numerous time that we were arguing that Guadalupe wanted
20 Armando gone because Stephanie and Mael were both leaving the
21 house because of him. We never said that at any point during
22 this trial. No mention of Mael leaving the house has been
23 attributed to Armando by us. We never mentioned that it was
24 because of Armando that Mael was going to leave during the
25 opening, during cross-examination of a single witness, and

1 yet, that was a characterization that was made -- that was
2 presented to the jury as our theory of the case, that
3 Stephanie and Mael were both going to be leaving because of
4 Armando, which is just not accurate. We've never said that.

5 So for -- for all of those reasons, cumulatively,
6 we move for a mistrial and we're moving for a mistrial again
7 in light of the fact that the characterizations of our
8 defense continued and they were not always what we had argued
9 during this trial.

10 THE COURT: Thank you.

11 MR. ROWLES: The only mischaracterization I think
12 that they even stated was that it was just Mael and that I
13 said and not Stephanie because those were -- Stephanie's
14 moving was directly taken from the opening statements. And
15 the State's certainly allowed to comment on arguments made
16 during opening statements by the defense and the lack of what
17 the evidence showed and compare them to the opening
18 statements. And that's what the State did at this particular
19 time.

20 I don't think I burden shifted. I made their
21 comments on their opening arguments and their
22 cross-examination, and on that, I'd oppose the mistrial.

23 THE COURT: Okay.

24 MS. HOJJAT: And --

25 THE COURT: Anything else?

1 MS. HOJJAT: -- to clarify, we agree, yes, we
2 absolutely said that Stephanie leaving was one of Guadalupe's
3 motivations. We never said Mael leaving was one of them.
4 The State attributed that to us and then is talking about how
5 there's no evidence of it. We agree there's no evidence of
6 it. We never said that was something that was going on.

7 And not only is it burden shifting, it's burden
8 shifting on to us something that wasn't even our theory of
9 the case. They essentially attributed a theory to us, then
10 said there's no evidence of it, then went on to talk about
11 how there's no evidence of it, none of which is fair to
12 Mr. Vasquez-Reyes because we never raised that as a theory of
13 this case.

14 THE COURT: Okay. At this time, the motion for
15 mistrial is denied, and Officer Hawkes, you can bring the
16 jury panel in.

17 THE MARSHAL: Yes, ma'am.

18 (Pause in the proceedings)

19 THE MARSHAL: All rise for the entering jury,
20 please.

21 (In the presence of the jury.)

22 THE COURT: Does the State stipulate to the
23 presence of the panel?

24 MR. SWEETIN: Yes, Judge.

25 THE COURT: And the defense?

1 MR. FELICIANO: Yes, Your Honor.

2 THE COURT: Okay. Mr. Feliciano, you may address
3 the jury panel in your closing argument.

4 MR. FELICIANO: Thank you.

5 DEFENDANT'S CLOSING ARGUMENT

6 MR. FELICIANO: She wanted him gone and now he's
7 gone. Simple. This is a case about teenage girl who made up
8 allegations about her stepfather because she didn't want him
9 in the house, she wanted him out, and now he's gone.

10 So how did we get here? Well, we know -- we know
11 that Armando argued with the family a lot. We know there
12 were issues as far as arguments with Mael and Stephanie and
13 her husband. There was these issues about money, issues
14 about tools being put away, it sounds like he was
15 controlling, and she was tired of him.

16 So police were called. We know police were called
17 on April 16th of 2016. They were called in reference to a
18 domestic violence incident. Domestic violence is when
19 somebody hits another person, right? But Armando had not hit
20 anybody. He was basically just arguing with his step kids
21 about -- it was an issue of money. What you heard about it
22 was an issue about tools.

23 So we know that the police were not going to arrest
24 Armando, right? I mean, he didn't do anything. It was just
25 about money. They even took his money from him when he was

1 interviewed by the police. They weren't going to take him
2 away. Stephanie and her husband are upset. Sounds like
3 everybody's upset. Rosalba calling the police, you know,
4 multiple times to get him out of there. Stephanie and her
5 husband are about to move out. It sounds like a chaotic kind
6 of situation.

7 So this is when Guadalupe made her accusation. She
8 doesn't call the police, right? It's not like she musters
9 the courage to say enough. No, police are called by somebody
10 else, and while they were there and it's determined that
11 Armando is not going anywhere, she makes her allegation.

12 She says Armando's been sexually abusing her,
13 right? Penis to vagina sex. Then we hear that Stephanie at
14 the time says nothing, but a month -- over a month later adds
15 her allegation.

16 So what's the evidence in this case? What have you
17 heard? Other than the accusations by Guadalupe and
18 Stephanie, there's nothing else. I mean, you have to believe
19 their words here in order to have a guilty verdict. There's
20 nothing else in this case that suggests Armando did anything.
21 And in looking at what they said, it's simply not credible.

22 So, first Guadalupe. Let's talk about Guadalupe.
23 Okay. So a few things of Guadalupe. First we know that her
24 story keeps changing. You heard her testify before you and
25 it's extremely confusing what she's trying to say what

1 happened when because it keeps changing.

2 If you also look at what she's saying, the things
3 that she does say don't make much sense. And again, there's
4 nothing corroborating her story. There's nothing -- no other
5 piece of evidence that you've heard that makes what she's
6 saying more likely. Right?

7 So you have a jury instruction, and I'm not going
8 to read it to you, but jury instruction 7 talks about
9 credibility and how you determine if a witness is credible.
10 And one of the things that you look at is the reasonableness
11 of their statement and looking at what she said simply is not
12 reasonable. You'll have the instructions in your pack. You
13 can take back and look at those when you are in the jury
14 deliberation room.

15 So how is Guadalupe -- how has her statement
16 changed? Well, we know that when police were called, not by
17 her, but after her mother called two or at least three times,
18 police arrived. Armando's not going to jail. She approaches
19 police and says Armando put his penis in her vagina, the last
20 time being one week ago. So that would be a week before
21 April 16th of 2016.

22 And we'll get into the reports later, but Officer
23 Murray's report confirms that's what she said and so does
24 Detective Pretti's, one week.

25 So what is she claiming? She's claiming that she

1 didn't know that it was sexual abuse at the time -- sorry,
2 that should be 2015 -- until the time when police were
3 called. In April she had not learned that it was sexual
4 abuse until around November of the year before, which would
5 have been 2015, and which we'll see later that's just not
6 true, because we also heard that she learned -- she probably
7 learned about abuse years ago from different sources.

8 So we have the initial statement to police at the
9 Berkley address, right? We hear penis to vagina repeatedly,
10 last time one week ago. Later that day, she's taken to
11 police headquarters.

12 MR. SWEETIN: And Judge, can we approach just very
13 quickly?

14 THE COURT: Sure.

15 (Bench conference begins)

16 THE COURT: I mean, I know what the issue is, but
17 it's going to be up to the jury. I mean, I think you should
18 clarify if that's what the officer said.

19 MR. FELICIANO: I'm going to get --

20 THE COURT: Not that --

21 MR. FELICIANO: -- I'll get into that.

22 THE COURT: Because Guadalupe testified
23 differently --

24 MR. FELICIANO: I'll get into that.

25 THE COURT: -- you know, but, I mean, it's going to

1 be up to the jury as to what they, you know, believe. I
2 mean, assuming that's what your issue was.

3 MR. SWEETIN: Yes.

4 THE COURT: Okay.

5 (Bench conference concluded).

6 MR. FELICIANO: Okay. So now we are at the police
7 headquarters the same day, later in the day, now it changes,
8 right? Now, instead of penis to vagina, now it's numerous
9 allegations of anal sex.

10 Now it's years of abuse, abuse that happens
11 sometimes once a week, sometimes as much as three times per
12 week starting when she's very young. And now the last time
13 it happened was five or six months ago, not a week.

14 So, and I'll talk in a minute about the -- why we
15 know it's -- she said one week at Berkley, when she was
16 outside the Berkley address. But that's what she said to
17 police outside the address, right? She gets to the police
18 headquarters, and she says five or six months ago was the
19 last time she was -- there was any type of sexual contact.

20 And then at a prior hearing, not -- another hearing
21 in this case, she said it was possibly one year ago or
22 possibly two years ago. So she's kind of all over the place.
23 We go from a week to five to six months to one year to
24 possibly two years.

25 So she came to court and she testified at trial,

1 and she talked about the last time she said something
2 happened and she gave a bunch of details about the
3 circumstances, what led up to it, and stuff like that. But
4 if you remember when I questioned her about her previous
5 statement, that she didn't say that she remembered how
6 anything started the last time, instead, that she noticed
7 something inside of her body, which she later claimed was
8 Armando's penis.

9 Noticed is not my word. If you remember I asked
10 her specifically about using the word noticed, and she agreed
11 -- she didn't want to agree, but she agreed that she had said
12 that before. That she noticed something inside of her. That
13 makes absolutely no sense.

14 So then we get to trial. First day of trial last
15 week, new allegation. Now cunnilingus. First time she ever
16 talked about cunnilingus is in court on the first day of
17 trial. So what she's -- basically, what she's saying -- she
18 definite the mention it when she first spoke to the police in
19 front of her house on Berkley, right? She didn't mention it
20 when she went to police headquarters later that day. She
21 didn't mention it at prior hearings in this case. Basically,
22 she's saying that Armando put his mouth on her vagina and
23 that's something that she basically didn't remember for three
24 and a half years.

25 So her memory's actually getting better as time --

1 time goes, it seems like, because this is completely new and
2 she agreed that she had never testified about that before or
3 told anybody about it before.

4 Okay. So she says that she didn't know that the
5 sexual -- what was going on. The one to three time anal rape
6 for years was wrong until she was about 13 years old, which
7 makes absolutely no sense. And then she talks about how she
8 found out about abuse, but we'll talk about that in a minute.
9 But just what she's on its face makes absolutely no sense.

10 Okay. So she learned -- she said she realized that
11 she was being abused when she was talking to a boy, and
12 that's not -- that was actually online, a boy online that she
13 talked to. So that's one way where she said that she
14 realized it was wrong, but then later she said she learned
15 about abuse at school. She also said she learned about it
16 online, and she learned about it even on television, so --
17 and she admitted that she had learned about this stuff many
18 possibly years prior. So this wasn't -- it's not that she
19 first realized what abuse was on November 15th. She's saying
20 that she was looking at -- she was looking at stuff and
21 talking to people much before that.

22 But she's saying in court that she didn't know it
23 was wrong, which, again, makes absolutely no sense.

24 So look at the words that she used. She came into
25 court, she's 17 years old. She says words like vagina, front

1 part, anus, back part. But when -- 17, right? But back when
2 she gives her statement when she's 14 years old, what words
3 does she use? Those are her quotes. I don't need to read
4 them. We've gone through these, you've heard them before,
5 but those are her quotes, her -- a 14-year-old girl who says
6 she had no idea that any of this was wrong. Again, that
7 makes absolutely no sense.

8 So as we've seen, it seems like her memory's
9 getting better as the years go on, right? She was asked
10 questions by both sides in this case, and a lot of the
11 answers were I don't remember and I don't understand. If you
12 remember the questions that were being asked, they weren't
13 difficult questions. They weren't confusing, they weren't
14 worded inappropriately. They were all pretty straight
15 forward questions. And she couldn't answer them or she
16 didn't want to answer them.

17 And when she didn't want to answer, she repeatedly
18 say I don't remember or I don't understand. Back when she
19 gave her statement initially to police she wasn't saying
20 those types of things, and when she testified before, she
21 wasn't saying those types of things. There was no I don't
22 remember, I don't understand type answers.

23 So in addition to what she's saying, you know,
24 changing and not making much sense, look at the other
25 evidence that you've heard. You heard about a medical exam,

1 which was normal, and you heard about, you know, there were
2 no other witnesses that came in and said, you know, we were
3 home during some incident and noticed something. Nobody ever
4 said they noticed anything. You heard from Rosalba and
5 Stephanie, right?

6 You didn't hear from Mael and Stephanie's husband,
7 but Guadalupe claimed that she would be locked in the room
8 with Armando raping her and nobody in the house has come to
9 testify that they ever saw them in the room together with the
10 door locked. You would think if that is going on possibly
11 once a week, possibly up to three times a week, that somebody
12 would have seen something, and you heard absolutely nothing.

13 So the medical exam. Medical exam was April 21st
14 of 2016. We know that police were called April 16th. So a
15 few days later she goes and gets her medical exam. And we
16 heard Dr. Cetl talk about what the medical exam included. We
17 heard that they checked for vaginal trauma, they checked for
18 anal trauma, they checked all of her body for any type of
19 abuse.

20 And what did Dr. Cetl find? Absolutely nothing.
21 No evidence of vaginal trauma, even though Guadalupe says she
22 felt pain. No signs of anal trauma, and no signs ever cuts.
23 Remember, she said that she was cutting for quite a while.
24 She talked about wearing long sleeves to cover it.

25 She said she would cut herself to the point of

1 bleeding. I asked her if she would bleed, she said yes.
2 Yet, there was no evidence of any type of cut marks, any type
3 of scarring, and nobody else ever testified about seeing her
4 arms or in any way bleeding or marked, which, again, makes
5 zero sense.

6 So additionally, we did hear from some other
7 witnesses. There were family. We didn't hear from friends.
8 We heard from police, and we did not hear from medical
9 providers, other medical providers.

10 So family, we heard from Rosalba, her mother. Her
11 mother who lived with Guadalupe and Armando for about ten
12 years. She never saw anything suspicious. She never
13 suspected abuse. All right. If this is going on one time,
14 three times a week, you'd think she would have noticed
15 something. She never said Guadalupe was acting strangely
16 around Armando, nothing like that.

17 There was some talk about locks on the doors, and I
18 guess, Guadalupe asked for a lock, they gave her a lock. But
19 we heard what kind ever locks these were. These were easily
20 opened. These were -- these were locks that most of us have
21 in our homes. You can open them with a screwdriver or some
22 sort of flat edge. This isn't a dead bolt. Okay? This
23 isn't like a home lock where you can keep somebody out.
24 These are privacy locks.

25 And she testified they're teenagers and they want

1 privacy, that's why they got the locks. So to suggest that
2 they're locking them -- they're barricading themselves in the
3 room from Armando is just not supported by the evidence.
4 Those locks are not stopping anything.

5 And then we heard Rosalba talk about Guadalupe's
6 behavior. She said acting aggressively for the last few
7 months. So although Guadalupe's now saying that she hasn't
8 been abused, you know, since November of 2015, I guess,
9 they're saying that after the abuse stops is when she starts
10 to act out, which again, makes no sense.

11 We heard Rosalba say it was normal teenager stuff,
12 and when pressed to clarify, the aggression issues were not
13 with Armando, they were with her other siblings. So again,
14 none of this makes sense.

15 So I'll get to Stephanie's allegation in a bit, but
16 she was also in the house, right? She lived there for ten
17 years with her sister offer and on, with her sister and
18 Armando and her mom. Again, she never suspected any sort of
19 abuse by Guadalupe -- or that Armando committed upon
20 Guadalupe. Even though she claims that she was raped by
21 Armando, she claims that she had no concern about her little
22 sister hanging around with him. Makes no sense.

23 So then we have the boy online. We heard talk
24 about him. We didn't hear from him. That -- that this boy
25 was talking about something that he knew about sexual abuse

1 and Guadalupe says that's kind of where she learned from it.
2 That's what she's saying now, that she learned about five
3 months before the allegation.

4 But we don't know the boy's name. She didn't
5 remember the boy's name. The boy wasn't interviewed, so we
6 don't even know if this boy exists.

7 Then her female friend, right? This was her best
8 friend. This wasn't just some girl that she met. This was
9 her best friend. This -- they were such good friends this
10 girl would sleep over. Guadalupe claimed that Armando
11 touched her in front of that girl. She claims that she told
12 Armando to leave in front of the girl, and she claims that
13 she discussed Armando touching her with the friend. Yet, she
14 could not remember her best friend's name. Again, that's --
15 that's just not credible, that's not reasonable.

16 So then we heard from Officer Murray. He was the
17 -- it sounded like he was the first police officer to arrive.
18 And what he says contradicts with what Guadalupe's saying
19 now. He arrived on April 16th of 2016. And he was asked,
20 read in his report and he wrote, Guadalupe stated Armando
21 regularly puts his penis inside of her vagina and sex with
22 her. The last time being perfectly one week ago from today.
23 There was nothing unclear about that. I mean, there's been
24 some mention, well, this is a preliminary, we aren't sure
25 exactly what happened. I don't know if it can get any

1 clearer than that. There was no mention of anal rape,
2 fondling, anything.

3 Same with Detective Pretti. We asked him about his
4 report. Again, penis in the vagina one week ago. So he's
5 saying the exact same thing and that is different than what
6 Guadalupe told you in court.

7 What about other medical providers? We heard that
8 Guadalupe said that she -- when she was about nine or ten,
9 presumably when this abuse would have been happening, that
10 she was having a issue going to the bathroom. We asked her
11 specifically did you go to the doctor? She said yes. I
12 asked her did they look at her anus? And she said, yes, they
13 looked at her anus. Nothing. No evidence of abuse. No
14 medical provider came to court to talk about it, nothing.

15 Other than that, no other evidence, right? I mean,
16 we asked about stains on sheets, stains on clothing. Rosalba
17 never saw anything. And you know if that would have -- she
18 would have seen that, she would have said so. Or if they had
19 it, that would be something you would have seen, but nothing.

20 Now, the district attorney in their closing
21 statement said something about the abuse escalating. Like it
22 started out with certain conduct and it got worse and worse
23 and worse. But that's not what Guadalupe says, right? She
24 says the first time that Armando's penis went in her anus was
25 at the second apartment. So I know we talked about I think

1 seven or eight places they lived. But if you remember, the
2 first apartment was the one bedroom, right? They lived there
3 for a few weeks. After that, they moved to the second
4 apartment with the pool, and that's where she says that his
5 penis went inside of her anus for the first time.

6 So while they're saying this is sort of escalating,
7 that's not what she's saying. Well, what she's saying
8 changes depended when she's saying it, but, I mean, she said
9 -- she said lots of different things. But she has said at
10 one point that this happened immediately or very quick after
11 meeting Armando.

12 So together looking at her changing story, the
13 reasonableness of what she's saying, and no other evidence,
14 you have to conclude that Guadalupe's not credible, and
15 that's it. There's no other evidence to support what she's
16 saying.

17 So Stephanie. Like Guadalupe, Stephanie's story
18 changes, right? Again, what she's saying doesn't make much
19 sense and again, there's no corroborating evidence. There's
20 no other evidence that you've heard that makes what
21 Stephanie's saying more likely.

22 So before Stephanie makes her allegation, what
23 happened? Well, we know that a case was filed against
24 Armando. We knew that the case was moving forward. We knew
25 that they were getting ready for a hearing. In fact, they

1 were at the District Attorney's Office meeting with their
2 investigator, Ruth Leon. They were there to talk about
3 Guadalupe to get her ready for a previous hearing.

4 And so Guadalupe's there. Rosalba's there.
5 They're not expecting to see Stephanie. Because remember,
6 she said nothing happened previous to this. So she makes her
7 allegation. She makes her -- in May of 2016, about a month
8 later. But how has it changed? Well, first she said nothing
9 happened, right? She knew that Guadalupe was making the
10 allegation from the Berkley house, but she never -- they were
11 -- she was asked specifically, she said, I said -- I said
12 that nothing happened.

13 A month and a half later when they're getting ready
14 for court, now something happened.

15 So let's talk about what Stephanie actually said.
16 She said that -- well, she was 19 when she spoke to the
17 police in May of 2016. She said she was abused when she was
18 around 12 years old. She said she was abused one time. And
19 I'll get back to why that's -- that's important. But that's
20 what she said.

21 She also said she felt pain when this was going on.
22 She felt -- she felt pain for weeks. Yet, there's no
23 evidence. I mean, she wasn't even sent for a medical exam,
24 and there was nothing -- there was no testimony from Rosalba
25 that she took her to the doctor or she was complaining of

1 pain. Basically, she wants you to believe that her vagina
2 hurt for weeks and she just kind of lived with it and didn't
3 do anything about it, which makes no sense.

4 So she claims she was abused when she was about 12,
5 right? That would have been around 2009. Yet, she's raped,
6 yet she has no concern for her little sister hanging out with
7 the guy that raped her. That makes zero sense.

8 And she knew the -- she said she knew the abuse was
9 wrong when she was 12. Different than Guadalupe who didn't
10 know it was abuse. And I'll get to that in a moment.

11 Like Guadalupe, Stephanie, no medical evidence, no
12 other witnesses. But we did hear from Rosalba, right?
13 Again, like Guadalupe, Rosalba lived with Stephanie and
14 Armando for about ten years. Never saw anything suspicious.
15 Never suspected abuse. And again, you heard the Berkley
16 house, this was the house that the police went to. You heard
17 that was 1098 square feet. So a relatively small home.

18 So allegedly all this stuff is going on in
19 relatively small house with multiple people living there and
20 nobody saw anything at any time. That simply makes no sense.
21 You heard about the other homes that they lived in. The
22 first place was a one-bedroom apartment. The first -- the
23 second was a two-bedroom apartment. Again, nothing.
24 Relatively small living spaces with five people at times, and
25 nobody saw anything.

1 You didn't hear from Mael, the brother, and you
2 didn't hear from Stephanie's husband. If they would have
3 seen something that was suspicious, you think they would have
4 been here, right? They would have come to court to talk
5 about it. So it's safe to presume same thing for them. They
6 -- they weren't even called because they didn't see anything
7 either.

8 So individually, Guadalupe and Stephanie showed
9 that they're not credible. But look at what they're saying
10 in relation to each other. Guadalupe abused shortly after
11 meeting Armando. You remember that? She said pretty quick,
12 right? But with Stephanie, he waits for years for some
13 reason. Does that make sense? If he's this abusive person
14 who's raping everybody, don't you think it would be similar?
15 Do you think why would he immediately start abusing
16 Guadalupe, yet wait a few years for Stephanie? That makes no
17 sense.

18 And look at what they say regarding the
19 allegations. Guadalupe says mostly anal sex, one time a week
20 for years. I mean, they lived together for about ten years.
21 The charging range of when they're saying is 2007 to 2015.
22 So all those years, right? One time a week, up to three
23 times a week. Again, nobody saw anything.

24 But what does Stephanie say? One time, vaginal
25 sex. Again, if this is his thing, don't you think that these

1 would be similar stories? No. They're completely different.

2 Back to April 16, 2016, Guadalupe says, I was
3 abused. Stephanie says, nothing happened to me. What else?
4 So Guadalupe says November of 2015, she's saying now she
5 didn't know abuse was wrong. So that should be 13 going into
6 14. Stephanie at age 12 knew that the abuse was wrong, she
7 says. She said she knew what happened to her was wrong, she
8 just chose not to tell anybody.

9 Now, these are sisters, right? They live in the
10 same house. Similar upbringings. It makes zero sense that
11 Guadalupe at an older age wouldn't know what sex abuse was
12 when Stephanie knew it when she was younger. Again, that
13 makes no sense.

14 So looking at what they said individually, not
15 credible. Looking at what they say in relation to each other
16 just also shows that they're simply not credible.

17 So there was some talk about Armando's
18 interrogation. So you have a jury instruction, and I'm not
19 going to read it to you, but it's number 24, that talks about
20 voluntariness of a statement to police. And you'll see that
21 instruction that talks about the statement must be -- it must
22 be voluntary and you have to look at the totality of the
23 circumstances to determine if it's voluntary.

24 So what do we know about Armando? You heard from
25 Dr. Harder. Dr. Harder has been a psychology, I think, he

1 said for about 20 years. Hundreds of evaluations, hundreds
2 of tests, and he actually works for the courts, right? He
3 does some work for the courts. He's a court expert.

4 He performed the IQ test and appeared to him that
5 Armando was doing his best. You heard that an average IQ is
6 100. And you also heard that after his testing, he concluded
7 that Armando's IQ was 61. Well below average.

8 In fact, that was a test score that was consistent
9 with somebody who was intellectually disabled. Now, we
10 talked about the specific tests. I asked him questions about
11 the Wechsler test, the intelligence scale, the memory scales.
12 We won't get into the specifics of them, but you heard that
13 on the intelligence skill he was in the .5 percentile, very
14 low.

15 The memory scales in the second percentile. So you
16 heard Dr. Harder say that most people would test higher than
17 he would because of his low functioning.

18 You also heard from Dr. Harder that other things
19 can affect how a person functions, right? I mean, nobody's
20 saying he couldn't walk. I mean, that's absurd. Walk, talk,
21 work. And he said that a person with intellectually --
22 intellectually disabled can do those things. It just
23 depends. Everybody's different, obviously. But other
24 medicals could affect functioning. Stress could affect
25 functioning and educational background could affect

1 functioning.

2 He also said that a person with an intellectual
3 disability might not know it because of their low
4 functioning, and that scores like these don't -- they're not
5 expected to change over time. He said, you know, a person
6 can read, they can do whatever, but they're generally going
7 to be -- have the same IQ.

8 So this is what we know about Armando. So now
9 we're back to the Berkley residence. Armando's placed in
10 handcuffs, they put him in the backseat of the police car and
11 he's taken to police headquarters.

12 He says he's not feeling well, right? I mean, you
13 heard that he has some medical -- he has a few medical
14 issues. He even asked for his medication. They declined to
15 give him his medication. And you heard from James Duke, the
16 EMT, who took Mr. Vasquez-Reyes's blood pressure when he was
17 booked at the jail. So he said it was 180/116. He said that
18 was high, but it wasn't just high -- he didn't say it was
19 high because of stress or anything. He said that was high.
20 And not only did he say that was high, he said that required
21 further attention, which that's something that he did after
22 that.

23 So Armando says he doesn't feel well, asks for --
24 you know, asks for his pills. Detective Pretti says, look,
25 we'll get you an EMT. That's not translated perfectly. The

1 translator says we'll call you an ambulance if you need an
2 ambulance, which he declined. At that point, his cell
3 phone's taken and he's stuck in a room for an hour before
4 anybody talks to him.

5 So he denies the allegations. They ask him about
6 it, and he denies, right? You heard it. They insist several
7 times that it happens. He agrees, he believes that's all he
8 needs to do to get him out of that room, he so and the
9 interview's over.

10 But look at what he said. What he's saying -- or
11 what he said to police isn't the same as what Guadalupe says.
12 If that was credible or reliable, don't you think that would
13 somewhat match up? It's completely different.

14 In addition to being completely different, he says
15 I don't remember to a lot of questions. And when you look at
16 the statement completely, it really makes very little sense,
17 especially when you look at what Guadalupe's saying. You
18 would expect those to match up somewhat, and they don't. And
19 with regards to Stephanie, nothing is said about Stephanie.

20 So basically, you have the detective giving him
21 information and Armando repeating it back. That's how we got
22 here. It's not reliable. And as you've heard, low IQ and
23 medical issues that all impact his ability to relay -- to
24 receive and relay information.

25 So the investigation in this case. We know that on

1 April 16th of 2016, Guadalupe was referred for a medical
2 examination. That's about it, right? Nothing else was done.
3 There was no efforts to talk. I mean, other than Rosalba,
4 that was it. They did no recorded statements with anybody.
5 They didn't try to get any other evidence. They didn't try
6 to verify all these other people that might have been
7 involved and might know something. They didn't do any of
8 that.

9 And regarding the medical records from that issue
10 when she was nine or ten that she talked about, she didn't
11 try to get those. And here we are at trial three and a half
12 years later. You've heard no evidence about that. And after
13 Stephanie's allegation, still nothing, right? No medical
14 exam, nothing else. No other statements. That was it. I
15 mean, they're basically taking whatever they say, and that's
16 where we're at three and a half years later.

17 Altogether, what do we have in this case? We have
18 Guadalupe's statement, which we've shown is not credible,
19 Stephanie's statement, which is not credible. We have what
20 Armando told the police, which is not reliable, not credible,
21 and there's really no other evidence, right? I mean, their
22 words is all they have, and their words aren't credible.

23 So you have a jury instruction, jury instruction 5,
24 which talks about reasonable doubt. I'm not going to read it
25 and put it up. But you'll have it -- you'll have it in your

1 packet and you can go over it, you know, when you're back in
2 the jury room. But the State has to prove its case beyond a
3 reasonable doubt. That's undisputed. And can you say that
4 that's been done? I mean, can you say after hearing what
5 Guadalupe said at the Berkley address and how it changed to
6 later that day, changed at a later hearing, changed at trial,
7 can you say that that's been proven beyond a reasonable
8 doubt? No, you can't. You can't.

9 When -- on the first day of trial she's alleging a
10 new count of cunnilingus, when she's never said that before.
11 Can you say that's proven beyond a reasonable doubt? No.
12 No, you can't.

13 Stephanie. You would have to believe her testimony
14 beyond a reasonable doubt as well. And have they proven
15 that? And again, no. I mean, she said nothing happened when
16 she asked her. But now later she says something did happen,
17 which doesn't make much sense, and they -- they haven't
18 proven that beyond a reasonable doubt.

19 So like we said at the beginning of this case, Ms.
20 Hojjat said in opening statement, they wanted -- she wanted
21 him gone, now he's gone, right? This is a case about a
22 teenage girl who does not like her stepfather and wants him
23 gone and now he's gone. But none of it's supported by the
24 evidence.

25 So after listening to all the evidence and I'd say

1 the lack of evidence, we're confident that you'll Armando
2 Vasquez-Reyes guilty -- or not guilty of all charges. Thank
3 you.

4 THE COURT: Thank you. The State may address the
5 jury in your rebuttal argument.

6 STATE'S REBUTTAL CLOSING ARGUMENT

7 MR. SWEETIN: May it please the Court, counsel,
8 co-counsel, ladies and gentlemen of the jury. First on
9 behalf of State, I want to thank you for your patience and
10 attentiveness through this process. It's been over a week
11 now, and we appreciate your time in this very important
12 matter.

13 I am going to be the last attorney that you hear
14 from. That might be good, that might be bad. I don't know
15 what perspective you have, but I'm the last guy that you're
16 going to hear from in this case.

17 Now, through my argument, I'm going to make
18 reference to certain instructions. And you heard other
19 parties reference them as well. As I reference them, I'm
20 going to give you an -- I'm going to reference the jury
21 instruction number because as the Judge said, you'll have the
22 jury instructions in back if you want to go back and look at
23 them a little more closely later on down the road, you can do
24 that back.

25 Now, first of all, defense counsel touched on

1 reasonable doubt a little bit. And I just want to start by
2 just talking about that because ladies and gentlemen,
3 reasonable doubt's not something that's a mystical thing.

4 MR. FELICIANO: I'm going to object to the
5 explaining reasonable doubt. I mean, it's in the
6 instruction.

7 THE COURT: The objection is sustained.

8 MR. SWEETIN: And I just making reference to the
9 instruction, the instruction makes reference to the
10 reasonable doubt is not beyond any doubt. It's not beyond
11 mere possible doubt.

12 MR. FELICIANO: And Judge, same objection.

13 THE COURT: I don't have any problem with
14 specifically citing to the instruction and reading the words
15 in the instruction, but anything else you're not permitted to
16 do.

17 MR. SWEETIN: So I'm going to talk to you a little
18 bit about both of are the victims in this case, Guadalupe and
19 Stephanie. You heard them both testify. I'm going to make
20 reference to one jury instruction. You heard it before as we
21 get started, and that's jury instruction number 7.

22 And that says in part, the credibility or
23 believability of a witness should be determined by his or her
24 manner upon the stand, his or her relationship to the
25 parties, his or her fears, motives, interests or feelings,

1 his or her opportunity to have observed the matter to which
2 he -- she testified, the reasonableness of his or her
3 statements and the strengths or weaknesses of his or her
4 recollections.

5 Now, I want to look at essentially how can we
6 determine the credibility and believability of Guadalupe and
7 Stephanie? And in doing that, I want to basically zero in on
8 three specific things. First, that the timing and the
9 circumstances of their disclosure. Second, their description
10 of their abuse, and third their testimony here during trial.

11 So first, let's talk about the initial disclosure
12 and let's talk about Guadalupe first. Now, to start off
13 with, Guadalupe does not disclose her abuse when it begins
14 happening. We know that it starts when she's about five or
15 six years old. Why is that?

16 Well, remember the circumstances underlying this.
17 Remember that Guadalupe comes here in about 2007. Her mother
18 has been here since about 2005. So she's been away from her
19 mother for about two years now, and these are pretty tender
20 years for a child. I mean, she's five or six when she's --
21 when she's here. So we're talking about, you know, three,
22 four years old that she's away from her mother.

23 So now she comes here to the United States, comes
24 to Las Vegas, and now she starts living with her mother and
25 her mother's boyfriend. Now, she's sort of reuniting with

1 her mother at this point. Her mother's boyfriend, the
2 defendant, is the only other adult at the house. He is one
3 of the people that provides for her, he watches her when her
4 mother's away working at night, as we've indicated. And it's
5 under this -- this factual pinnings that, in fact, the sexual
6 abuse began.

7 And how does it begin? The defendant, who's sort
8 of a father figure to her at this point, you know, brings her
9 into a bedroom, and that point he starts touching her body,
10 and he describes to her that this is okay, but he tells her
11 not to tell anyone.

12 Well, ladies and gentlemen, given that factual
13 (indecipherable), is it unreasonable that young Guadalupe at
14 four or five doesn't make a disclosure at that point? Now,
15 what about as time goes on? She figures out at some point
16 that what's happening to her is not right and remember that
17 she has this conversation with a friend at school? She has
18 this class at school, and this happens when she's in the
19 Ferguson house, she indicates. This is when Guadalupe is in
20 about sixth or seventh grade. She's about 11 or 13.

21 Now, you know, defense counsel makes references and
22 questions to well, what -- is it reasonable that she wouldn't
23 know what was happening to her was wrong during this time?
24 Well, you know, the State submits that the defense is missing
25 something here. Is Guadalupe finding out that what was

1 happening was wrong or is she really just finding that she
2 doesn't have to tolerate it, what's happening to her?

3 Now, you know, think about this for a minute
4 because Guadalupe talked about this pain that she was having
5 as she was penetrated anally. And you might imagine what
6 kind of pain that might cause even at a young age. Do you
7 think that she liked that? She sort of focused in on that
8 pain.

9 She also indicated -- remember when she talked
10 about when she was living at that -- that green house over
11 there by the Jim Bridger school? She talks about an occasion
12 that happens there when the defendant comes in and he is
13 anally penetrating her, and he's trying to penetrate her
14 vagina. Remember? She's trying to push him off.

15 And she indicates, yeah, his penis does go in just
16 a bit, it hurts her. She recognizes the, State would submit,
17 that what's happening to her is not something that she likes,
18 it's not something that's pleasurable to her, it's not
19 something that she thinks is -- she wants to continue. But
20 this has happened to her since she was five or six years old.
21 I mean, this is sort of what she's learned to live with.

22 But that changed when Guadalupe found out that she
23 didn't have to live with the abuse. And that's when she had
24 this class in school. She talked to the friend. That was
25 the first time that she realized that she could put an end to

1 the abuse. But she still doesn't disclose at that point.

2 And why is that?

3 Well, you know, you heard her tell you, she was
4 worried about what her mother, her family, would think about
5 her. She specifically told you up on the witness stand she
6 did not want to lose her mother.

7 So this is where Guadalupe is. She's sort of in
8 conflict at this point. The State submits that the evidence
9 shows that Guadalupe just wanted this to stop. And she
10 subsequently went about what she could to make that happen.
11 Remember, she indicated that after she, sort of, has this
12 awareness, she starts to get more aggressive? She ultimately
13 gives the defendant this ultimatum, you know, if you continue
14 to do this, I'm going to -- going to call the police.

15 Now, unfortunately, efforts don't work, and what
16 was she to do at this point? And this sort of leads up to
17 April 16th of to 2016. Okay. Now, what are the state of
18 things as the police arrive at that house on that day? And
19 the State submits that the evidence shows that there's really
20 not much disagreement between anyone in that household.
21 First, Guadalupe is not part of the -- the police response to
22 this. We'll start off with that.

23 Rosalba's the one that calls the police, and she
24 was clear as she testified that she's not making allegations
25 of anyone hitting anybody else. She's very clear that she

1 just wanted help resolving these issues she had, the issues
2 with rent, the issues with the tools. But Guadalupe's not
3 associated with this in any way.

4 And if you remember in the defendant's statement,
5 the defendant indicates that. You know, she didn't have
6 anything to do with any of this.

7 Now, the defendant appeared over this period of
8 time, State would submit, that he generally got along with
9 the family. There was no evidence of violence in the
10 household, regular police visits, none of that is in -- none
11 of that has come into evidence.

12 Rosalba had been living with the defendant for
13 about ten years at that time.

14 MR. FELICIANO: I'm going to object. Can we
15 approach, please?

16 THE COURT: Sure.

17 (Bench conference begins).

18 MR. FELICIANO: So Mr. Sweetin just said that -- he
19 talked about like hitting people and there's nothing --

20 THE COURT: Talked about --

21 MR. FELICIANO: About possible domestic violence
22 and nothing like that has come into evidence, which seems to
23 imply that maybe there's out there the jury did not hear
24 about. So we're objecting. We're asking for a mistrial.

25 MR. SWEETIN: I'm trying to make the exact opposite

1 point.

2 THE COURT: Yeah.

3 MR. FELICIANO: But there's no other reason to say
4 that it -- we heard nothing that came into evidence about
5 that other than there may be something out there.

6 THE COURT: Okay. Your objection's overruled. The
7 motion for a mistrial is denied, and you may proceed.

8 (Bench conference concluded).

9 MR. SWEETIN: So as they're living at this
10 residence, they're essentially just living there together.
11 You know, there's no violence at the house. The police
12 aren't coming there on a regular basis. She trusted the
13 defendant around her family. As a matter of fact, she left
14 her kids, you know, with -- with the defendant on a regular
15 basis, Rosalba did. They coexisted for years.

16 You know, as to Guadalupe, you heard Rosalba tell
17 you that she was the disciplinarian in the household. It
18 wasn't the defendant. The defendant's not telling her to do
19 things that she doesn't want to do. In the defendant's own
20 statement to the police, remember he talks about his
21 relationship with the family, and he tells them -- tells you
22 that he says that hey, you know, I love her, Rosalba, and her
23 kids, and I've been with them for years.

24 Now, it's clear that the defendant had -- did
25 provide financial support also for Guadalupe and her family.

1 If he moves out of that residence, the State would submit,
2 they lose that support. And how -- how important is that
3 support to them. You know, we sort of see that in this case
4 because we see that even while they're at the police station,
5 Rosalba is very stressed as to how she's going to be able to
6 pay rent and she's attempting to see if the defendant will
7 turn over the rent money so that she could pay the rent so
8 that they can stay in their apartment.

9 This clearly goes against wanting the defendant out
10 of that residence.

11 So Guadalupe approaches the police just after they
12 arrive at the residence. Now, remember, that the testimony's
13 clear here that they're just getting there. They're just
14 starting to get the information as to what's going on at this
15 particular residence as a result of the call. They're
16 working through that. They haven't resolved it, and it's at
17 that point, that Guadalupe approaches the police.

18 Clearly, she's approaching the police -- or
19 approached the police has nothing to do with what's going on
20 in regards to Rosalba's call.

21 Now, there's talk in regards to -- and I just want
22 to take a step here in regards to Counsel's contention that
23 Guadalupe discloses that she was last sexually penetrated the
24 prior week. The State submits that the evidence here is
25 clear that as the police officers arrive, the police officers

1 get a couple pieces of information from Guadalupe fairly
2 quickly.

3 And remember that patrol officers, as they arrive,
4 are merely gathering information that's going to be later
5 given to the detectives. And the information that the police
6 officer indicated was he remembers getting information that
7 there was sexual penetration going on, and that the last
8 incident of sexual abuse happened a week prior.

9 MR. FELICIANO: Objection. That misstates the
10 testimony.

11 THE COURT: Yeah, overruled. The jury will be the
12 ultimate determination of what the facts are in this case.

13 MR. SWEETIN: And remember, when Guadalupe goes and
14 talks to the detective at the police station just a short
15 time later, that's exactly what she tells him, you know, that
16 the last time there was sexual penetration, that was about
17 five months before, and that the last time there was sexual
18 abuse, well, that was like about a week before. That's when
19 we went through the kitchen and he touched her on the
20 buttocks.

21 So why is Guadalupe disclosing sexual abuse to
22 police officers on April 16, 2016? So what's her motive?
23 Now, she's been sexually abused for years. She hasn't
24 disclosed prior, but the State would submit that it's to this
25 point where she just can't handle it anymore. And now she

1 believes that she shouldn't have to. And so based upon that,
2 she's tried to do things. She's tried to push the defendant
3 off. She's given him this ultimatum, hey, if you continue to
4 do this, I'm going to call the police. It hasn't worked.

5 The last time that she made that ultimatum to him,
6 that she was aggressive, he stopped for a while. Then just
7 about a week before the police come, what happens? He walks
8 through the kitchen and he puts his hand on her buttock. And
9 what does she think as a result of that? She thinks that the
10 sexual abuse is -- is going to start again.

11 And you know what? It's at this time, that she
12 knows that basically everyone except for the defendant and
13 Guadalupe -- Guadalupe's mother are moving out of that
14 residence in a very short period of time. She knows her
15 mother working at night, she knows the defendant works during
16 the day. She knows that she is going to be alone with the
17 defendant, and he's going to have ample opportunity to
18 sexually abuse her. She is desperate, the State would
19 submit.

20 The State submits her fear of the defendant's
21 continued abuse is the clear reason for the disclosure on
22 April 16, 2016.

23 Now, what about Stephanie? Now, Stephanie, like
24 Guadalupe, does not disclose the abuse at the time of the
25 abuse and be why? Well, she's told by the defendant not to

1 tell. She told you here that she was scared. She was scared
2 that her mother wouldn't believe her. She wasn't aware of
3 the abuse of her sister at that time. She's clear on that.

4 She disclosed for the first time when she came to
5 the DA's Office with Guadalupe about a month after Guadalupe
6 disclosed. She didn't disclose to anyone prior to that, not
7 her friends, not even her husband, who she'd only recently
8 married.

9 So you have to first ask why didn't she disclose
10 after Guadalupe disclosed at the police station? Because she
11 was at the police station with Guadalupe. She knew that
12 Guadalupe had disclosed some sexual abuse by the defendant,
13 but still she did not disclose. Well, about this for a
14 minute. You know, Stephanie was abused back when she was's
15 13. She's 19 at this point. So a number of years before.
16 She's never told anyone. And now all of a sudden Guadalupe
17 makes this disclosure of abuse by the same person who abused
18 her.

19 You know, does it take some time to process that,
20 to sort of wrap your mind around that, and are there other
21 considerations? Because remember what Stephanie told you,
22 that she felt guilt. Why? She felt if maybe she had
23 disclosed, maybe she would have saved her sister. She didn't
24 know when her sister was being abused.

25 What about the fact that she was just recently

1 married? She told you on the witness stand she was concerned
2 about what her new husband would think about this. About the
3 fact that she was sexually abused by the defendant. She
4 didn't want him to find out. I mean, these are all
5 considerations that she had.

6 So do you think that Stephanie was sort of
7 struggling with what she was going to do? Now, she comes to
8 the District Attorney's Office with Guadalupe, she still
9 hasn't told anyone. But let me ask you this, do you think
10 that when she came to the DA's Office, that she had made a
11 decision before she came here that she was going to say
12 anything? She's still struggling with this, ladies and
13 gentlemen. She's trying to figure this out, figure out
14 what's going to happen.

15 And what happens? Well, the DA investigator, Ruth
16 Leon, sees her. Now, we talked about previously that this
17 stood out to Ms. Leon. She's done all kinds of pretrials for
18 a number of years, and when she saw Stephanie, she remembers
19 this case because of what she saw. She saw, the State would
20 submit, a woman in turmoil. She's trying to figure things
21 out. She ultimately goes and asks Stephanie if she wants to
22 talk, and Stephanie immediately, there's no hesitation, she
23 -- yes.

24 She doesn't ask to go talk, but as soon as she's
25 asked, she goes. She's taken into a room with the

1 investigator and the attorney. And as soon as they get in
2 the room, what happens? She breaks down. And remember, I
3 asked Ms. Leon, you know, well, there's different range of
4 crying. Is this whimpering, what is it? This wasn't
5 whimpering. This was full out she lost it. And it's at that
6 point, that she discloses that she was sexually abused, too.

7 The State submits this is not something Stephanie
8 is doing for Guadalupe. This is something, remember that
9 Guadalupe had already disclosed, the defendant was arrested,
10 the DA was proceeding with the case. State submits that this
11 is something that Stephanie is doing for herself. You know,
12 she's finally disclosing the abuse of the defendant.

13 Think about this, do you think that if Stephanie
14 was making up this abuse to support her sister, that she
15 could have done a better job of it? If that was her design
16 to support her sister in regards to saying, oh, yeah I was
17 abused by him, too, do you think that maybe she would have
18 disclosed a little bit differently because the abuse that
19 Stephanie suffered was much different than Guadalupe's for
20 whatever reason.

21 Remember, in regards to Stephanie, it happened only
22 once. And we know Guadalupe was repeatedly over a period of
23 time. In regards to Stephanie it was vaginal penetration,
24 although, Guadalupe was anally penetrated most of the time on
25 a regular basis.

1 Guadalupe's sexual penetration happened within five
2 months previous to this statement, and in regards to
3 Stephanie, it's been like six years. You know, this isn't a
4 disclosure that was sort of custom crafted and meant to pour
5 the abuse of Guadalupe. This was a disclosure that was made
6 by Stephanie as she was in turmoil and disclosed for the
7 first time, this abuse.

8 Now, what about the description of abuse? Now,
9 both Guadalupe and Stephanie, as we indicated, described
10 their abuse. The abuse was different to the extent it only
11 occurred once in regards to Stephanie and on a regular basis
12 in regards to Guadalupe.

13 But first, in regards to Stephanie. Stephanie told
14 you that she remembered what happened to her. It was a long
15 time ago. She's 19 and she's making this disclosure. She
16 was 13 when it happened. And it only happened one occasion.
17 She remembered the surrounding circumstances, what she was
18 doing that day, a general kind of day, where others in the
19 household were, where it occurred. She remembers some
20 specifics about what occurred. She remembered being told by
21 the defendant I want you. She remembered the pain. She
22 remembers how she was laying on the bed when she was when
23 penetrated. How the defendant removed her and his clothing.
24 Him telling her not to tell anyone.

25 She told you something as she was testifying here

1 as well. She told you that this was the first time she was
2 sexually penetrated, when she was sexually assaulted by the
3 defendant.

4 So you have a 13-year-old girl who is brought into
5 this bedroom, the person who is sort of in a position as a
6 father to her is sexually abusing her, sexually penetrating
7 her, she's being sexually penetrated for the first time and
8 these are things she remembers. Is this reasonable?

9 Now, what about Guadalupe? Now, Guadalupe told you
10 that she was sexually abused from the time she was five or
11 six until she was 14. So that's abuse that's lasting about
12 eight or nine years. And over that time, she's sexually
13 abused repeatedly. She indicated, you know, sometimes it was
14 multiple times in a week.

15 Now, although it started out with touching, she's
16 very clear that it progressed as he was touching her, he
17 caused her to touch him and then ultimately, he placed his
18 penis in her anus and then later a few times in her vagina.

19 She also talked about the defendant placing his
20 mouth on her vagina and even licking his hand and putting his
21 hand down in the area of her vagina. But what was the focus
22 of her disclosures? It was the fact that the defendant
23 placed his penis in her anus, and why? Well, she told you
24 over and over again, it hurt, the pain.

25 She also talked about the defendant trying to place

1 his penis in her vagina, but think about how she framed that
2 because she talks about that he was trying to put his penis
3 in her anus, she was pushing him off. Why? Because it hurt.
4 Because the tip went into her vagina and it hurt. Pain.

5 The State submits that pain seems to be what she
6 remembers the most out of these encounters with the
7 defendant. However, she did describe specific incidents at
8 many of the houses that her family lived at. She described
9 events that happened at different places in the houses, at
10 different houses that she specified. Different positioning
11 of her body, different ways in which the defendant got her
12 into his room where the events often happened.

13 The State submits that given the volume and the
14 nature of this conduct, it's clearly reasonable that a victim
15 would remember the conduct as Guadalupe has described.
16 Guadalupe also testified to a couple other things, which
17 defense counsel made reference to. A couple of kids that she
18 knew. The person who told her that this person's sister was
19 being sexually abused. The friend who slept over at her
20 house one night.

21 The State -- the State submits that she clearly
22 testified that she does not remember their names. But I
23 would note, you've heard great testimony about -- long
24 testimony about all of the houses that this family lived in,
25 there's seven of them, if you haven't counted them, in eight

1 or nine years.

2 The State would submit to you they -- Guadalupe
3 most likely did meet friends over the years, other children
4 that the frequency of her moving residences clearly prevented
5 her from developing significant lasting --

6 MR. FELICIANO: I'm going to argue that -- I'm
7 going to object. That misstates the testimony. We heard no
8 testimony about that.

9 THE COURT: Okay. And again, the jury will
10 determine what the facts are.

11 MR. SWEETIN: Clearly, the State submits that that
12 would cut against her being able to develop long-lasting
13 relationships with these kids. There was also testimony in
14 regards to Guadalupe cutting her arms during the abuse.

15 Now, she said that she took the metal out of a
16 small pencil sharpener that she had. One of the little
17 pencil sharpeners that you just sort of -- a portable one
18 that you use to sharpen your pencil, and with that she would
19 cut herself. She said nothing about deep cuts. She was
20 trying to deal with what was happening to her and acting out
21 in a manner that helped her to deal with it.

22 She said that this happened at the two-story house
23 and the Ferguson Street house. Now, at the time she
24 discloses to the police, she was living at another residence,
25 and that's the Berkley Street house. We are talking about a

1 span of at least five months since she's been being sexually
2 abused. There's nothing to show that any -- that any reason
3 to believe that there would be cutting or evidence of cutting
4 at or around the time of her disclosure.

5 And again, you know, I want to come back to ask
6 yourself what motivations does Guadalupe have to say any of
7 these things happened in they didn't happen? There has been
8 none, the State would submit. She coexisted in this house
9 for years. That was the state from the time she was four or
10 five years old all the way up until she was 14 years old.

11 What if she wanted to get out of the house? What
12 if defense counsel said, hey, she wanted to get the defendant
13 out of the house so she made this thing up? What do you
14 think about that? If she did that, do you think that she
15 could have made it up in a little bit easier way? I mean,
16 you're talking about a 14-year-old girl here, who from the
17 get-go starts talking about abuse that she has suffered since
18 she was four or five years old.

19 If you were making up abuse, as a 14-year-old
20 child, do you think that that's the easiest way to do it? Do
21 you think that's the way most 14-year-olds would do it? Or
22 would they specifically talk about an incident that happened
23 recently Lee?

24 But no, Guadalupe goes into detail. She starts
25 talking about all these residences that they lived at, and

1 where this happened, and where that happened, and she lays
2 out this long scope of things that are happening. And you
3 know what? She lays out this progression.

4 Now, if Guadalupe was making this up, the State
5 submits that this 14-year-old Guadalupe has just described a
6 lot of conduct that she didn't have to, and in so doing,
7 she's pretty well described a course of grooming conduct that
8 might make -- not make a lot of sense to a 14-year-old. But
9 when you look at it in the totality, as we are, it makes a
10 heck of a lot of sense, the State would submit.

11 MR. FELICIANO: I'm going to object. Can we
12 approach?

13 THE COURT: You may.

14 (Bench conference begins).

15 MR. FELICIANO: I'm objecting to the -- to talking
16 about grooming. We've heard no evidence of that.

17 THE COURT: About what?

18 MR. FELICIANO: Of grooming. About he was grooming
19 her.

20 MS. HOJJAT: Counsel is testifying.

21 MR. FELICIANO: We've heard nothing about that.
22 The first time we've heard the word grooming in this trial is
23 we [inaudible] Mr. Sweetin just spoke about it. So we're
24 objecting to it, and we're moving for a mistrial.

25 MR. SWEETIN: It's argument. It's a common term,

1 grooming. It represents basically, you know --

2 THE COURT: Right. I mean, I really wish you would
3 just talk about the facts and not the term grooming.
4 Grooming is a term of art in these type of cases. So the
5 objection as to grooming is sustained. Just talk about the
6 facts.

7 MR. SWEETIN: Okay.

8 MR. FELICIANO: Motion for a mistrial.

9 THE COURT: Did you make -- I'm sorry, did you make
10 another motion --

11 MR. FELICIANO: I did.

12 THE COURT: -- more mistrial? I apologize. Does
13 the State want to respond?

14 MR. SWEETIN: As I indicated, grooming is a common
15 word. It's used in conversation. This is argument. The
16 State submits it's entitled to argue its case.

17 MS. HOJJAT: And if I --

18 MR. SWEETIN: And there's no reason for a mistrial.

19 MR. FELICIANO: We know that's not a conversational
20 word. I mean, they noticed a grooming expert for that
21 reason. This isn't a commonly used word that the jury would
22 know.

23 MS. HOJJAT: Precisely, Your Honor. I mean,
24 generally speaking, we're the ones objecting to a grooming
25 expert, and the State always takes the position that this is

1 not something that lay people know about, this is not
2 something that jurors know about. That this is expert
3 testimony that they need to be informed of, and now Counsel
4 is basically testifying during rebuttal.

5 THE COURT: All right. The objection as to the
6 term of grooming sustained. You can talk about the facts.
7 And the motion for mistrial is denied.

8 (Bench conference concluded).

9 MR. SWEETIN: So over this period of time,
10 Guadalupe kind of lays out a real good progression of
11 incidents that happened sort of makes, the State submits,
12 rational sense as to how you get to a much more serious
13 offense of penetration.

14 Do you really think that this 14-year-old Guadalupe
15 thought this up on the fly as the police arrived at this
16 residence on April 16th of 2016? Ladies and gentlemen, that
17 makes no sense.

18 And finally, let's talk about Guadalupe and
19 Stephanie's testimony at trial. And in that regard, I want
20 to talk to you about what -- what reason does Guadalupe or
21 Stephanie to come to court now and tell you what the
22 defendant did? What is their motivation right now? It's
23 been said before. It's been years. It's been three and a
24 half years.

25 First, in regard to Guadalupe, you heard testimony

1 that just after this, it was just Guadalupe and Rosalba
2 living at the residence, and that was the way it was ever
3 since April 16th of 2016. And in regards to Stephanie, she's
4 married. She has a child. The defendant has no role in
5 their lives now.

6 Guadalupe and Stephanie have no reason to tell
7 anything but the truth here, the State would submit. Do you
8 think that either of them wanted to be here? You know, there
9 was talk before in regards to the fact that they came here
10 and they testified to you in front a room of strangers to
11 some of the most private sort of things that could ever
12 happen to somebody.

13 They're both trying to get through this. Guadalupe
14 is trying to get through school. Stephanie has this husband
15 and baby.

16 What are they getting out of coming here and
17 testifying? Wouldn't it be easier to just say, hey, I don't
18 want to testify, you know what, nothing ever happened?
19 They're here because they're telling you what happened to
20 them. Look at the relationship of the parties, they're
21 fears, motives, interests, or feelings, the reasonableness of
22 their statements. And when you do, the State submits, the
23 evidence clearly supports the credibility and believability
24 of Guadalupe and Stephanie.

25 I would note that defense counsel made reference of

1 Dr. Cetl and the exam that Guadalupe had with Dr. Cetl.
2 Remember Dr. Cetl's testimony that more than 90 percent of
3 exams that are performed on sexual abuse victims come back
4 normal. Normal is normal. Remember she said that?

5 There was also some discussion in regards to the --
6 the doctor -- Guadalupe going to the doctor in regards to
7 constipation. Dr. Cetl clearly testified to that that a
8 doctor would not do any sort of exam like she would do. And
9 she also testified to the fact that the resiliency of the
10 anus and that many times you cannot find evidence of
11 penetration even when there is penetration.

12 Now, jury instruction number 13 says to you that if
13 you believe the testimony of Guadalupe and Stephanie beyond a
14 reasonable doubt, that's sufficient for a verdict of guilt.
15 But the State submits in this case we have -- we have much
16 more than that because we have the defendant's statement.

17 Now, one thing that was mentioned in defense
18 counsel's closing argument was that the police were giving
19 info to the defendant, information to the defendant, and he
20 was giving it back. The State submits there is nothing in
21 this statement that might indicate that. You know, and to
22 walk through this, and I just want to walk through this step
23 by step if I can because I think it's important.

24 First, you heard that the defendant didn't know why
25 he was being interviewed when this interview begins.

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ARMANDO VASQUEZ-REYES,) No. 80293
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 Appellant,)
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 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 27 day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
ALEXANDER CHEN

AUDREY CONWAY
WILLIAM M. WATERS

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/Rachel Howard
Employee, Clark County Public Defender's Office