

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSBALDO CHAPARRO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Oct 20 2020 01:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 81352

Appeal from a Judgment of Conviction in Case CR17-0636
The Second Judicial District Court of the State of Nevada
Honorable Egan Walker, District Judge

JOINT APPENDIX VOLUME 3

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5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE EGAN WALKER, DISTRICT JUDGE

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11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR17-0636
)	
14 OSBALDO CHAPARRO,)	Department 7
)	
15 Defendant.)	
)	

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19 TRANSCRIPT OF PROCEEDINGS
20 TRIAL VOLUME II
21 February 12, 2020
22 10:30 a.m.
23 Reno, Nevada

24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

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1 RENO, NEVADA, February 12, 2020, 10:30 a.m.

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4 THE COURT: This is case number CR17-0636, the
5 State of Nevada versus Osbaldo Chaparro. Mr. Chaparro is
6 present with his attorneys. I show the appearance of the
7 attorneys for the State. I show the appearance of the jury
8 and the alternates. Good morning, ladies and gentlemen.
9 Thank you for being here.

10 Let me turn to my colleagues from the State and
11 ask would you like to offer opening argument.

12 MS. NORTHINGTON: Yes, your Honor.

13 THE COURT: Go ahead.

14 MS. NORTHINGTON: Good morning. Who are they
15 going to believe, me or you? Those are the words that the
16 defendant, Mr. Chaparro, said to Lindsey when she threatened
17 to call 911. Who are they going to believe, me or you?
18 These are the words that he said as he sexually assaulted her
19 in the early morning hours of December 17th of 2016.

20 On Friday, December 16th is the night before,
21 Lindsey and her friends, Natasha and Ashley, rented a room at
22 the Harrah's in downtown Reno. They did so because they
23 wanted a fun night out in downtown Reno. Lindsey was home
24 for Christmas break. She was in law school. She's from Reno

1 and came home to hang out with her hometown friends over
2 Christmas break.

3 They go out. They start at the Eldorado and the
4 Brew Brothers and they go to the Golden Flower for Thai food.
5 Prior to getting Thai food, Ashley calls it a night, and goes
6 back to the hotel in Harrah's and falls asleep. Natasha and
7 Lindsey, they go and get Thai food and they make their way
8 back to the Eldorado.

9 They're outside of Brew Brothers inside in the
10 Eldorado at the slot machines by the entrance. At a little
11 after 3:00 a.m. in the morning on December 17th, 2019, Brew
12 Brothers was closing and there was a bunch of people leaving.
13 Lindsey decided to go call it a night. So she left Natasha
14 by the slot machines and she walked back to the Harrah's
15 hotel room.

16 She left the area, she walked through the Eldorado
17 past the fountain, past the buffet and out the doors on to
18 Virginia Street. She walked south on Virginia Street towards
19 the Harrah's and she crossed Virginia Street under the Reno
20 arch and began walking down the covered breezeway outside of
21 Harrah's.

22 What Lindsey didn't know was she was being
23 followed. You see, sometime earlier in the night, the
24 defendant noticed Lindsey. Video surveillance shows him

1 hanging out by the slot machines outside of Brew Brothers
2 watching Lindsey. And surveillance video shows Lindsey walk
3 off by herself, vulnerable.

4 The video shows Mr. Chaparro following her through
5 the Eldorado, past the fountain, past the buffet, down the
6 escalators and out the doors on to Virginia Street. He then
7 follows her south on Virginia Street, follows her across the
8 crosswalk under the Reno arch and under that breezeway
9 outside of Harrah's.

10 Lindsey did not know she was being followed until
11 he stepped in front of her and stopped her from walking. He
12 gets in front of her and he cuts her off. Lindsey tries to
13 step to the side, and at that point, he reaches out and he
14 wraps one arm around her waist and the other one around and
15 grabs her butt.

16 Lindsey starts struggling and she starts
17 screaming, no, no, stop. The defendant takes that
18 opportunity and he gets his hand under her dress and he
19 shoves it violently in between her legs, penetrating her
20 vagina with his fingers. Lindsey is screaming. You see her
21 instantly go still as soon as that penetration occurs and
22 then she starts struggling again to get away.

23 She threatens to call 911 and at that point the
24 defendant leans over and whispers into her ear, do it. Who

1 are they going to believe, me or you? That's all on video
2 surveillance.

3 And not only is it on video surveillance, but
4 Lindsey's friend Natasha saw the struggle. When Lindsey left
5 Natasha outside the Brew Brothers, Natasha left soon
6 thereafter as well and she was walking down Virginia Street
7 and she was crossing Virginia Street under the Reno arch when
8 she saw Lindsey in a physical struggle with the stranger. So
9 Natasha begins running and screaming, no, no, no.

10 As Natasha is running up and after Lindsey
11 threatens to call 911 and he taunts her about calling 911, he
12 lets go. He turns around and he puts that hand in his pocket
13 and he walks right by Natasha, right by the video camera,
14 smiling.

15 Lindsey is a mess. She's distraught. She's
16 hysterical. She turns and she hurries into the Harrah's.
17 Doesn't wait for Natasha. She wants to get inside. She
18 starts scrambling around Harrah's. She's lost. She can't
19 find the elevator to get up to her room. She wants to get to
20 Ashley who is in her room.

21 She goes up to a security guard and she's about to
22 speak to that security guard when Natasha finds her and
23 Natasha and Lindsey go upstairs, they wake up Ashley and then
24 the three of them go to the security office of the Harrah's

1 and report the assault and 911 is called.

2 Meanwhile, the defendant walks by to the Eldorado,
3 hand still in his pocket. He goes in the bathroom by the
4 buffet for about 90 seconds and then goes back to gambling
5 and hanging out with his buddies.

6 During this trial, you're going to hear from
7 Lindsey and Natasha and Ashley. You're going to see the
8 video surveillance. You're going to hear from Debbie
9 Robison, who is a sexual assault examiner. She's a forensic
10 nurse.

11 You're going to hear from Debbie that Lindsey
12 underwent an exam two hours later and injuries were found.
13 You're going to hear from Lindsey that she was sore for days
14 and it hurt when she urinated, it stung because of the cuts.

15 You're going to hear from a criminalist from the
16 Washoe County Crime Lab and he's going to testify that DNA
17 was tested in this case, but that the results were
18 inconclusive. And he's going to say that that's not
19 surprising whatsoever. And the reason for that is because of
20 the brief nature of the encounter and simply the nature of
21 the factors that were at play.

22 You're going to hear from a woman named Pamala,
23 and what Pamala is going to tell in is that in 2011, this man
24 did something shockingly similar to her. In January of 2011,

1 Pamala was at the Nugget HR department applying for a job.
2 After interviewing for a job, she goes out to her car to
3 leave and the defendant approaches her under the guise of
4 asking for directions. And as soon as he realizes that no
5 one else is in that parking lot, his demeanor changes and he
6 attacks her.

7 He shoved Pamala face first into the front seat of
8 her car. Her torso is across the driver's seat, the center
9 console and the passenger seat of her car. Her purse goes
10 flying on to the floorboard of the passenger side. Her feet
11 and legs are still outside of the vehicle. And he climbs on
12 top of her. He's grinding his pelvis into her butt and he
13 reaches his hand down into her shirt and bra causing
14 scratches and abrasions all over her breasts and chest.

15 Pamala is going to testify that she was screaming
16 and making such a scene that only after a few minutes he got
17 scared and ran off. Pamala is also going to testify that
18 because of what he did to her on January 17th of 2011, he was
19 convicted of battery with intent to commit sexual assault.

20 We are here today for what he did in 2016 to
21 Lindsey. We are here today for what he did in the early
22 morning hours of December 17th of 2016 to Lindsey outside of
23 Harrah's.

24 Because of his conduct, he's charged with three

1 crimes, sexual assault, battery with intent to commit sexual
2 assault, and open or gross lewdness. At the end of this
3 trial, we are going to stand here on behalf of the State of
4 Nevada and ask you to hold the defendant accountable for what
5 he did to Lindsey and find him guilty. Thank you.

6 THE COURT: Thank you.

7 MR. FUSS: We'll be presenting an opening
8 argument. May I approach to get the podium?

9 THE COURT: You certainly may.

10 MR. FUSS: Thank you, your Honor. Ladies and
11 gentlemen, this case is about one day and one event that took
12 place on December 17th, 2016 involving Mr. Chaparro and the
13 complaining witness.

14 Don't be distracted from your jobs as a juror.
15 You indicated to us in voir dire, you indicated that you
16 would focus on the facts of this case and this case alone.

17 They talked about the video, everything that
18 happened is on video and a 30 second video, and that clip
19 will show you exactly what happened in that contact.

20 I would like you, if you will, to have laser focus
21 in this case, focusing on the video, the DNA evidence in this
22 case, listen to the testimony of the SART exam and our
23 expert, Ms. Claire Nelli, another what they say SANE
24 examiner, who is from California, they use a different term,

1 but they do the same thing.

2 What Mr. Chaparro did that night was lewd, crude
3 and boarish behavior. He was more than just locker room
4 talk, water cooler talk, talk between boys on an elevator.
5 He put his hands on her without her permission in a very
6 public, well-lit area with witnesses around.

7 You will see a video, as the State mentioned, that
8 shows that this happened in less than 30 seconds between Mr.
9 Chaparro and the complaining witness.

10 Video is like instant replay. We talked about
11 that in voir dire. We talked about the ability to be a
12 witness. That video, the DNA evidence will be your instant
13 replay. We have instant replay in baseball, football,
14 basketball and tennis and you get it in this case. Tennis is
15 video. Instant replay in my opinion is the best way to
16 determine is the ball in or out. If you've ever watched a
17 tennis match, they show you the computer replay and it will
18 show you whether the ball touched the line or didn't, in or
19 out.

20 There will be no objective evidence presented by
21 the State that indicates that Mr. Chaparro put his hands
22 inside the complaining witness' tights. There will be no
23 evidence that he -- that his hand touched her genital area,
24 penetrated her vagina or her vulva.

1 The video won't show it, the DNA evidence won't
2 confirm it. The only accusations that support those claims
3 are memories of the complaining witness. And we talked about
4 that in voir dire. We talked about what were things that you
5 would expect reactions from a victim, the reactions of how we
6 remember or misremember things. Memories that are not
7 supported by the video or the DNA evidence, memories that are
8 blurred by alcohol, fueled by anger and shaken by fear,
9 inconsistent with the video and some unsupported by the
10 video, accusations that have grown over time.

11 It's been a long time since this event took place,
12 and you'll hear very different statements from the beginning
13 to the end. Memories grow.

14 I'm asking you, again, laser focus, the events on
15 December 17th, 2016, why you are here. Mr. Chaparro, again,
16 crossed line on that night on December 17th, 2016. The
17 behavior was lewd, boarish and crude. But we're going to ask
18 you find him guilty of Count Three, the open and gross
19 lewdness.

20 The objective evidence will not support a count
21 that he sexually assaulted her by digitally penetrating her
22 with his fingers.

23 Also, Count Two won't be supported, because it
24 also alleges that he attempted to digitally penetrate her

1 with his fingers under the tights. The video won't support
2 it and the DNA evidence won't support it. I thank you for
3 your time. And I thank you for your ability to listen and
4 focus on the evidence. Thank you.

5 THE COURT: Thank you, Mr. Fuss. Mr. Lee or
6 Ms. Northington, your first witness.

7 MR. LEE: The State will call Lindsey.

8 (One witness sworn at this time.)

9 THE COURT: Once you're comfortably seated, ma'am,
10 go ahead and pull the microphone in front of your face.
11 Please give your attention to Mr. Lee when he's ready for
12 questions.

13 LINDSEY

14 called as a witness and being duly sworn did testify as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. LEE:

18 Q. Good morning, Lindsey.

19 A. Good morning.

20 Q. Could you spell your name for the record?

21 A. L-i-n-d-s-e-y.

22 Q. And, Lindsey, tell us a little bit about yourself.
23 What do you do?

24 A. I'm currently studying to take the California bar.

1 Q. When do you take that bar?

2 A. February 24th and 25th.

3 Q. Two weeks from now?

4 A. Yes.

5 Q. How about rewind back to December of 2016. What
6 were you doing?

7 A. I was finishing my first year of law school.

8 Q. Okay. Locally or somewhere else?

9 A. In San Francisco.

10 Q. I'm just going to cut to the chase and go right to
11 these dates of December 16th and December 17th of 2016. For
12 those relevant times, what were you doing? What brought you
13 to downtown Reno?

14 A. I was celebrating the last day of my winter break.
15 My friends and family were here.

16 Q. Are you from this area?

17 A. I was born here.

18 Q. Okay. So who were you with?

19 A. I was with my friend Ashley and my friend Tasha.

20 Q. What was the plan?

21 A. We got a room. We were just going to go out and
22 have some fun, celebrating me leaving for my next semester.

23 Q. Where was the room at?

24 A. At Harrah's.

1 Q. Was there at any point some other people that
2 joined you?

3 A. Yes.

4 Q. Who? Just to get a better picture or idea of who
5 all was with you or saw you at some point.

6 A. The room I only got it with Ashley. But Tasha met
7 up with us and she had a date. And Ashley's friend Amanda
8 stopped by and said hi. It was mainly just me and Ashley.

9 Q. Was the plan for you and Ashley to go out and have
10 a good time?

11 A. Yes.

12 Q. So I assume you got ready?

13 A. Yes.

14 Q. And then where did you go first?

15 A. We went to Brew Brothers.

16 Q. What was going on at Brew Brothers?

17 A. We were just making a stop, got a drink.

18 Q. Okay. Just one drink?

19 A. Yes, I bought it. I bought myself and Ashley a
20 drink.

21 Q. Were there any drinks that were had beforehand?

22 A. Yes.

23 Q. Where at?

24 A. In the hotel room.

1 Q. Where at?

2 A. We had a couple of shots.

3 Q. Is that where you stayed downtown?

4 A. We got a room so we wouldn't have to worry about
5 drinking and driving and being unsafe.

6 Q. Do you recall how long you were at Brew Brothers?

7 A. About an hour.

8 Q. At any point in time at Brew Brothers, did you
9 ever see this individual to my left in the -- I'm going to
10 call it a greenish blue shirt?

11 A. No, I didn't.

12 Q. Was there a line to get into Brew Brothers?

13 A. Yes.

14 Q. Do you recall having to give your license up to
15 Brew Brothers before you got in?

16 A. Yeah. They check your license before they let you
17 in.

18 Q. Do they scan it in some machine?

19 A. They do.

20 Q. Do you recall that there was a picture taken of
21 you?

22 A. Yes.

23 Q. And during that time, you did not see this
24 individual?

1 A. No.

2 Q. So inside Brew Brothers, who were you with?

3 A. I was with Ashley, Tasha, her friend John.

4 Q. And let me backup. This whole area of Brew
5 Brothers, Harrah's we're talking about, this is all within
6 Washoe County?

7 A. Yes.

8 Q. At any point you're describing these events, did
9 they happen outside Washoe County or inside?

10 A. Inside Washoe County.

11 Q. When you leave Brew Brothers, what's the plan?

12 A. When we left, we were going to go get something to
13 eat.

14 Q. Where at?

15 A. The Golden Flower.

16 Q. What's the Golden Flower?

17 A. It's a Thai restaurant, Thai, Chinese.

18 Q. Is it near downtown Reno?

19 A. Yes.

20 Q. How did you get there?

21 A. We Ubered.

22 Q. Who went to the Golden Flower?

23 A. It was myself, Tasha and her friend John.

24 Q. Where did Ashley go?

1 A. She went up to the room and went to bed.
2 Q. Up to your room in Harrah's?
3 A. Yes.
4 Q. So did she separate before going to the Golden
5 Flower?
6 A. Yes. She didn't go to the Golden Flower with us.
7 Q. How did you get to Golden Flower?
8 A. We Ubered.
9 Q. And did you eat there?
10 A. Yes.
11 Q. What did you get?
12 A. Pad Thai.
13 Q. How do you know that?
14 A. Because I only order pad Thai.
15 Q. Do you remember about how long you were there?
16 A. It was kind of busy, so about an hour, I'd say.
17 Q. Is this in the early morning hours of
18 December 17th?
19 A. Yeah. It's pretty early in the morning.
20 Q. How does that -- that ends, I'm assuming, where do
21 you go?
22 A. We decided to go back to our room.
23 Q. At Harrah's?
24 A. Yes.

1 Q. Did you stop anywhere before then?

2 A. We stopped right in front of Brew Brothers. The
3 hotels all connect, so we walked through that way.

4 Q. Now, Eldorado is where Brew Brothers is, right?

5 A. Correct.

6 Q. That doesn't connect to Harrah's?

7 A. No.

8 Q. You're talking about Eldorado, Silver Legacy?

9 A. Yes.

10 Q. Circus Circus?

11 A. Yes.

12 Q. You made your way back on foot through the hotels?

13 A. Yes.

14 Q. Did you ever go back to Brew Brothers?

15 A. No.

16 Q. What's outside of Brew Brothers?

17 A. There's a bunch of slot machines, there's a
18 fountain and just like a hang out area.

19 Q. Again, is it still you, Natasha and John?

20 A. Correct.

21 Q. Anyone else there with you that you knew?

22 A. No.

23 Q. At that time, specifically at the slots, did you
24 ever see or recognize or was your attention drawn to this man

1 over here in the bluish green shirt?

2 A. No.

3 Q. How long were you there outside of Brew Brothers?
4 Again, I'm asking rough estimates.

5 A. I would say very shortly, 20 minutes, an hour, I'm
6 not sure.

7 Q. Were you guys doing anything special?

8 A. No. They were sitting on the slot machine chairs
9 and we were just talking and hanging out.

10 Q. How did that end?

11 A. I told them I was ready to go back to the room and
12 go to bed at Harrah's.

13 Q. Do you recall approximately what time now this is
14 in the morning?

15 A. It's about 3:20, 3:00.

16 Q. And so was Natasha originally coming with you?

17 A. She was supposed to, but she wasn't technically
18 staying in the room.

19 Q. Were you going to make your way back by yourself?

20 A. Yes.

21 Q. Did you know how to get out of the Eldorado?

22 A. Yes.

23 Q. Did you start to make your way down that way?

24 A. Yes, I did.

1 Q. Have you seen video surveillance that was shown to
2 you showing these things?

3 A. Yes.

4 Q. You outside of Brew Brothers, you leaving
5 Eldorado?

6 A. Yes.

7 MR. LEE: Your Honor, at this time, I'll move to
8 admit Exhibit 1 and 2.

9 THE COURT: Exhibit 1 and 2 have been stipulated
10 to, as I understand it.

11 MS. BERTSCHY: That is correct, your Honor.

12 THE COURT: 1 and 2 are admitted. You may publish
13 it if it is your desire.

14 BY MR. LEE:

15 Q. If I put it up in front of you, can you see it on
16 your screen?

17 A. Yes.

18 Q. So I'm showing you what has been marked and
19 admitted as Exhibit Number 1. If you don't mind, I'm going
20 to have to bounce back and forth a little bit with this
21 computer. You see that there?

22 A. Yes.

23 Q. Do you see where you are at in this video
24 surveillance?

1 A. Yes.

2 Q. Could you draw on the screen there, just -- you
3 can either touch it or draw a circle around where you're at
4 just to orient us.

5 A. Right there.

6 Q. You'll have to push.

7 THE COURT: If you drag your fingernail, it works
8 best.

9 BY MR. LEE:

10 Q. That's you with the green circle towards the left,
11 the woman in the grayish dress?

12 A. Yes.

13 Q. If you could hit the bottom left corner of the
14 screen, that will clear that marking. How about is Natasha
15 seen in this picture?

16 A. Yes.

17 Q. Can you do the same for Natasha?

18 A. She's right here.

19 Q. Could you clear that? She's the one just to your
20 left in this picture?

21 A. Yes, in the striped dress thing.

22 Q. There looks like some individual in dark seated in
23 front of Natasha.

24 A. Yes.

1 Q. Who is that?

2 A. That's John, Tasha's friend.

3 Q. Do you recognize anyone else that you knew at the
4 time in this photo or was that it?

5 A. That was it.

6 Q. How about the individual to my left in the
7 greenish bluish shirt, do you see him in this video?

8 A. Yes.

9 Q. Could you please circle him? And you circled the
10 individual to the far left of the screen facing to the right?
11 Is that an accurate depiction?

12 A. Correct.

13 Q. Could you clear that, please? I'm going to hit
14 play at the beginning and we'll watch through and every now
15 and then I'll stop it.

16 A. Okay.

17 Q. Again, the individual you circled before, is this
18 the person now to the right of the screen in the white shoes?

19 A. Yes.

20 Q. You've left that first camera, I believe heading
21 to some stairs. Is that right?

22 A. Yes.

23 Q. Tell us about what you were wearing that night.

24 A. I was wearing a gray sweater material dress and

1 pantyhose and boots.

2 Q. Help me out with the pantyhose. As a guy, what do
3 you mean by pantyhose?

4 A. Like a thin material you would wear to court as a
5 female. Just like a thin --

6 Q. Different than what leggings are?

7 A. Yes.

8 Q. By thinness and thickness?

9 A. Pantyhose you would wear underneath a skirt.
10 Leggings are more like workout material.

11 Q. Where do these pantyhose, where do you wear them
12 around the top?

13 A. They're supposed to go up to your belly button
14 area.

15 Q. How about that night, were you wearing them like
16 that?

17 A. No. They wouldn't stay up.

18 Q. So where were they at?

19 A. They were located at my low hips.

20 Q. And, again, help me out, they wouldn't stay up,
21 what do you mean?

22 A. They kept on rolling down. The material kept on
23 rolling down. They weren't snug.

24 Q. Did the pantyhose have anything built into them?

1 A. There was like a material that was around the top,
2 but it was just like a darker area. It wasn't like anything
3 like --

4 Q. Because of that, did that make you feel like you
5 needed to wear underwear or did you not wear underwear?

6 A. I did not wear underwear.

7 Q. Because of what you just described?

8 A. Yes. They have like a liner that would be where
9 your underwear are and they're a darker area so I felt
10 confident not wearing any.

11 Q. Do you recall, the dress or the pantyhose, did you
12 provide them to authorities?

13 A. Yes.

14 Q. Have you seen them since?

15 A. No.

16 Q. I'm going to push play again at the time stamp on
17 the player of 36 seconds.

18 (Video played at this time.)

19 I'm stopping the player at 1 minute 50 seconds.
20 Did you have some interaction with somebody?

21 A. Yes.

22 Q. Was it that same individual who you described
23 before who was outside of the Brew Brothers?

24 A. Yes.

1 Q. Do you recall what that person said to you?
2 A. No. It was brief. I was on my phone.
3 Q. Who were you on your phone with?
4 A. I was trying to call my boyfriend.
5 Q. Was your boyfriend at the time in town with you?
6 A. No. He was where I lived currently.
7 Q. Pushing play again at 150.
8 (Video played at this time.)
9 I'm going to stop it at 2:47 on the player. If
10 you look to the far left, the individual walking out the
11 door, do you know who that is?
12 A. Yes.
13 Q. Who is that?
14 A. That's me.
15 Q. And at this point, are you exiting the Eldorado?
16 A. Yes.
17 Q. Where are you heading?
18 A. To Harrah's.
19 Q. Not far away?
20 A. No.
21 Q. I'm going to show you what has been marked as
22 Exhibit 3. Do you recognize that?
23 A. Yes.
24 Q. Generally speaking, what is it?

1 A. It's an aerial map of downtown.

2 Q. And does it fairly and accurately depict showing
3 like the Golden Flower, Eldorado and Harrah's?

4 A. Yes.

5 MR. LEE: Your Honor, I move to admit Exhibit 3.

6 THE COURT: Any objection?

7 MS. BERTSCHY: No, your Honor.

8 THE COURT: Exhibit 3 is admitted.

9 BY MR. LEE:

10 Q. Lindsey, do you see that in the screen in front of
11 you?

12 A. Yes.

13 Q. Just to orient us a little bit, if I'm circling
14 towards the top left, what is that we're looking at?

15 A. That's the Golden Flower restaurant.

16 Q. How about in the block right in the middle of the
17 photo that I've circled?

18 A. Eldorado.

19 Q. Is that where Brew Brothers is?

20 A. Yes.

21 Q. And are these the doors you're exiting from? It's
22 a terrible question. Which doors did you exit from from the
23 Eldorado?

24 A. You want me to mark?

1 Q. Please.

2 A. The ones that are like right here, because
3 Harrah's is diagonal to it.

4 Q. Is this Harrah's diagonal below to the right?

5 A. Yes.

6 Q. Do you recall somewhat of an archway as you enter
7 into Harrah's?

8 A. Yes.

9 Q. Is it covered?

10 A. Yes.

11 Q. Is it shown on this map?

12 A. Yes.

13 Q. Could you circle that for us? So with that
14 archway, are you still outside?

15 A. Yes.

16 Q. It's only covered at the top?

17 A. Yes.

18 Q. And then, lastly, have you seen the Reno sign that
19 says Biggest Little City in the World?

20 A. Yes.

21 Q. Do you know where that is on the map?

22 A. Yes.

23 Q. Could you show us, Lindsey?

24 A. Right in here.

1 Q. So, now, to give context, in that video when you
2 exited those doors, you were walking towards Harrah's and
3 specifically to the covered pathway into Harrah's?

4 A. Yes.

5 Q. Back to Exhibit 1, I'm going to push play at
6 2 minutes 47 seconds for the record.

7 (Video played at this time.)

8 I'm sorry. I'm stopping at 2:59. You did
9 something to your dress. What is that?

10 A. I pulled it down.

11 Q. How come?

12 A. Because the entire night it kept on riding up.

13 Q. You mentioned before that your pantyhose were
14 rolling down, I think were your words, is that accurate?

15 A. Yes.

16 Q. Were you doing anything with the pantyhose as
17 well?

18 A. I had kind of given up on pulling them all way up.
19 So they had rolled down, so I was keeping the dress down.

20 Q. I'm pushing play again at 2:59.

21 (Video played at this time.)

22 Here at 3:25-ish, two people are walking across
23 the crosswalk. Who is that?

24 A. Tasha and John.

1 Q. Did you know they were back there?

2 A. No.

3 Q. And, Lindsey, to get to that end of Harrah's, had
4 you crossed the street?

5 A. Yes.

6 Q. Is this Virginia Street that's running up and down
7 in this photo?

8 A. Yes.

9 Q. And did you specifically cross under the famous
10 Reno arch?

11 A. I did.

12 Q. And also at the time, so back on December 17th,
13 that individual with the white shoes, did you recognize him
14 as being around?

15 A. No.

16 Q. Even under the arch?

17 A. No.

18 Q. Even by Harrah's?

19 A. No.

20 Q. I'm stopping the player at 5:49. Do you see any
21 individual there that is familiar to you?

22 A. Yes.

23 Q. Is that the same individual --

24 A. Yes.

1 Q. -- that we've been describing? Now, for the -- at
2 this point, you were no longer in the Eldorado, correct?

3 A. Correct.

4 Q. Lindsey, what had just happened that we don't see
5 here?

6 A. I was attacked.

7 Q. By whom?

8 A. By the defendant.

9 Q. So you didn't recognize him before while he was
10 with you in the Eldorado, right? Do you recall how long the
11 attack happened?

12 A. Seconds, about 30 seconds.

13 Q. And you identified the defendant. How do you know
14 it's him?

15 A. Because I've seen him. I saw him that night. I
16 saw him attack me.

17 Q. How well did you get a look at him?

18 A. Well.

19 Q. To this day, do you remember his face attacking
20 you?

21 A. Yes.

22 Q. And when you say defendant, is it this individual
23 to my left in the greenish blue shirt?

24 A. Yes.

1 Q. Do you know his name to be Osbaldo Chaparro now?

2 A. Yes.

3 MR. LEE: Your Honor, may the record reflect her
4 identification of the defendant?

5 THE COURT: She has identified him.

6 BY MR. LEE:

7 Q. I'm going to backup just a little bit, Lindsey.
8 When you mentioned that you had scanned an image in at the
9 entry of Brew Brothers --

10 A. Yes.

11 MR. LEE: May I have continuing permission to
12 approach?

13 THE COURT: You may. Please approach freely.

14 BY MR. LEE:

15 Q. Let me show you Exhibit 5. Do you recognize
16 what's on page one?

17 A. Yes.

18 Q. Page two?

19 A. Yes.

20 Q. Does page one show a picture of your license?

21 A. Yes.

22 Q. Page two show your license as well as a photo of
23 you outside of Brew Brothers that day?

24 A. Yes.

1 Q. Do these fairly and accurately depict your license
2 and the image outside of Brew Brothers?

3 A. Yes.

4 Q. First I'm going to show you a series of
5 photographs. First is Exhibit 11.

6 A. Okay.

7 Q. What does that appear to be?

8 A. Me.

9 Q. Does that appear to you to be a still photograph
10 from the surveillance we just watched?

11 A. Yes.

12 Q. And Exhibits 12 through 22, would you mind
13 thumbing through those? Take as much time as you need and
14 look up to me when you're done.

15 A. Okay.

16 Q. Do you recognize 11 through 22?

17 A. I do.

18 Q. Excuse me. 12 through 22. Have you seen
19 surveillance from the Harrah's?

20 A. Yes.

21 Q. Do those all appear to be accurate depictions or
22 stills of that surveillance?

23 A. Yes.

24 MR. LEE: Your Honor, I'm going to move for

1 Exhibits 11 through 22 to be admitted.

2 THE COURT: Any objection?

3 MS. BERTSCHY: No objection, your Honor.

4 THE COURT: Lindsey, come over to the microphone.
5 I know it's tough. That way we can best pick up your voice.
6 Go ahead, Mr. Lee.

7 BY MR. LEE:

8 Q. I'm first going to publish Exhibit Number 12. I
9 recognize the lighting is bad and we'll show the video in
10 just a moment. Just to give us some context, is this now
11 under that awning, archway, whatever you call it?

12 A. Of Harrah's, yes.

13 Q. Is this you to the right?

14 A. Yes.

15 Q. Is that Mr. Chaparro just behind you?

16 A. Yes.

17 Q. Was there anyone else around that you recall?

18 A. No.

19 Q. How about from looking at this image or actually
20 the video as well I'll show you in a moment, do you recall
21 anyone else being around?

22 A. No.

23 Q. Exhibit Number 13 as well, what's going on here?

24 A. I'm being stopped.

1 Q. By Mr. Chaparro still?

2 A. Yes.

3 Q. Where were you trying to go?

4 A. My room.

5 Q. Was Ashley there?

6 A. Yes.

7 Q. Is this the first time you noticed Mr. Chaparro?

8 A. Yes.

9 Q. How did you react when he stopped you?

10 A. Scared. I had no idea why somebody was stopping

11 me. I thought I was alone.

12 Q. Did he say anything to you right then?

13 A. Not that I recall.

14 Q. I'm now going to show you what has previously been

15 admitted as Exhibit Number 2. Same area, correct, archway

16 into Harrah's?

17 A. Yes.

18 Q. Inside Harrah's, did you know how to get right

19 back up to your room?

20 A. No.

21 Q. Had you stayed there before?

22 A. No.

23 Q. I'm going to push play just right at the beginning

24 and we'll watch it through and I'll ask you some follow-ups.

1 (Video played at this time.)

2 We'll stop it at the player time of 3:26:13. Have
3 you thought about that day?

4 A. I think about it every day.

5 Q. When Mr. -- you said before that when he stopped
6 you, one of your first thoughts was you were going to be
7 attacked. Is that accurate?

8 A. Yes.

9 Q. What kind of an attack did you initially think?

10 A. I thought I was going to be kidnapped and raped, I
11 had no idea, with some strange man coming up to me when I was
12 alone.

13 Q. As you look at that video now -- have you seen it
14 before?

15 A. Yes.

16 Q. And a lot of times, even?

17 A. Yes.

18 Q. From your perspective, right, if we're looking at
19 this, let's call it third person perspective, from the first
20 person perspective, is there anything that was there that
21 happened that this video just doesn't capture?

22 A. It doesn't capture me screaming bloody murder and
23 being terrified and it doesn't capture the sheer terror that
24 I was going through.

1 Q. So what were you screaming?

2 A. I was screaming, no, no, I'm going to call 911. I
3 was just screaming.

4 Q. Was it throughout the time, throughout this
5 attack?

6 A. Yes.

7 Q. If we were to watch it and kind of parcel it out,
8 would you be able to tell us when the screaming started or
9 when it stopped, roughly?

10 A. Yes.

11 Q. Did he say anything to you at some point?

12 A. Yes.

13 Q. And from this video, can you tell also when he
14 says something to you?

15 A. Yes.

16 Q. So I'm going to play again Exhibit 2 and see if I
17 can get to certain points and I'll ask you questions.
18 Lindsey, about the clothing you were wearing, does the
19 video -- can you see right now where your pantyhose were
20 being worn at?

21 A. Unfortunately.

22 Q. Could you just show us real fast?

23 A. Like circle?

24 Q. Yeah, if you could.

1 A. Right here you can see they're bunched up and
2 rolled down.

3 Q. Okay. You call that just right at your hips?

4 A. Yes.

5 Q. Is your dress much lower than that?

6 A. Not much lower, unfortunately.

7 Q. Do you recall ever agreeing to any of this?

8 A. No.

9 Q. So when he puts his hands on you, was that with or
10 without your permission?

11 A. Without my permission.

12 Q. Do you see his right hand, Lindsey?

13 A. Yes.

14 Q. Where did he put his right hand?

15 A. He was holding on to my chest and was grabbing my
16 butt.

17 Q. At some point, did he go any further from your
18 butt?

19 A. Yes.

20 Q. With that right hand?

21 A. Yes.

22 Q. What did he do?

23 A. He put his hands in my tights, in my pantyhose.

24 Q. What did he do?

1 A. He put his fingers in my vagina.
2 Q. Was he wearing a glove of any type?
3 A. No.
4 Q. Was it skin to skin?
5 A. Yes.
6 Q. How do you know that?
7 A. Because I could feel him inside my vagina and he
8 was scratching me.
9 Q. Do you recall exactly his other hand, his left
10 hand at the time where it was?
11 A. At the time, I wasn't focused on his other hand.
12 Q. Do you recall him pulling you like at the time
13 stamp of 3:25:37 shows?
14 A. What?
15 Q. Do you specifically recall him pulling you or is
16 it kind of jumbled?
17 A. It was jumbled, but he was like pulling me around,
18 like dragging me, like I was losing my balance.
19 Q. And all of this we're watching, what are you
20 doing?
21 A. Screaming.
22 Q. Do you remember what you were screaming?
23 A. I was yelling, no, no, I'm going to call 911 and
24 just screaming bloody murder is the best way I can describe

1 it.

2 Q. And in all this time, would you describe yourself
3 as actively moving?

4 A. Yes.

5 Q. At some point, do you freeze momentarily?

6 A. I do.

7 Q. At which point is that?

8 A. When he puts his fingers inside of me, I was
9 shocked and scared and petrified.

10 Q. How would you describe the manner in which he did
11 that?

12 A. Forcefully, painfully, aggressive.

13 Q. So here is time stamp of 3:25:46, is this
14 approximately when that happened?

15 A. I believe so, yes. Yes.

16 Q. So stopping now at 3:25:48. You had said yes in
17 there, is that accurate, is that the time when it happens?

18 A. Yes.

19 Q. Do you see now where his left hand is?

20 A. Yes.

21 Q. Where is it?

22 A. He has a hold of my boob.

23 Q. And where is his right hand?

24 A. My vagina.

1 Q. So, Lindsey, now the time stamp of 3:59:51, is his
2 hand out of your vagina now?

3 A. I think so. It went so fast.

4 Q. So it was just momentarily that it happened?

5 A. But long enough.

6 Q. I'm pushing play at 3:25:51. Actually, I'm sorry.
7 I'm going to backup just a moment. At 3:25:49, do you see in
8 the far end under the entrance, there's an individual looks
9 like he's appearing?

10 A. Yeah, coming out, barely.

11 Q. Do you know that person at all?

12 A. No.

13 Q. At this point, are you still screaming or is the
14 screaming over?

15 A. I am yelling, I'm calling 911.

16 Q. And does he say something directly to you in
17 response to that?

18 A. He said, who are they going to believe, me or you?

19 Q. Do we see on video, too, when he says that?

20 A. You can see him lean in at the end.

21 Q. Did that statement have any effect on you, who are
22 they going to believe, me or you?

23 A. Yes.

24 Q. How so?

1 A. I hear his voice say it to me. It just really --
2 it just made me feel like scared.

3 Q. Were you at all hesitant to report this?

4 A. No.

5 Q. What did you do after this?

6 A. I went inside to get Ashley so we could go find
7 security.

8 Q. To tell them about this?

9 A. Yes.

10 Q. We see Natasha there running into the picture?

11 A. Yes.

12 Q. You didn't stop for her, though, correct?

13 A. No.

14 Q. How come?

15 A. I wanted to get inside as quickly as possible.

16 Q. At this point, did you know she was there?

17 A. I had no idea. My adrenalin was going. I just
18 wanted to get inside. I didn't know where he was. I just
19 wanted to go inside.

20 Q. Did your description of Mr. Chaparro ever change?

21 A. No.

22 Q. You didn't know who he was back then?

23 A. I had no idea.

24 Q. Didn't know his name?

1 A. No.

2 Q. You described him to police, though?

3 A. Yes.

4 Q. Is it the same way you describe him today?

5 A. Yes.

6 Q. Is there any difference now in the way he looks?

7 A. He cut his hair.

8 Q. And seeing him now, would your description of him

9 change any besides the hair?

10 A. No.

11 Q. Let's talk about what happened afterwards, then.

12 So you went, got inside?

13 A. Yes.

14 Q. Were you able to find your way right up to the

15 room?

16 A. No.

17 Q. How about emotionally, how were you feeling? Were

18 you doing okay?

19 A. I was crying hysterically, shaking. I couldn't

20 find my room. It was a confusing layout and I was just

21 searching for a way up to the room.

22 Q. Okay. I'm going to push play again at 3:26:02.

23 The person who came into the picture in all black, is that

24 John still?

1 A. Yes.

2 Q. Lindsey, as this video continues to play on, is
3 this now all inside of Harrah's?

4 A. Yes.

5 Q. I'm just going to skip a little bit from 3:28:10.
6 I'll jump ahead. How about 3:28:45, I'll just play again.

7 MR. FUSS: Your Honor, just for the record, you're
8 skipping, but there was continuous video, correct?

9 MR. LEE: I don't know what that means, your
10 Honor.

11 MR. FUSS: In other words, there's no gap in that?
12 The video just keeps going? It doesn't have much evidentiary
13 value at this time.

14 THE COURT: I'll just caution you, counsel, not to
15 have a dialogue between counsel.

16 MR. FUSS: I apologize.

17 THE COURT: Go ahead.

18 MR. LEE: Of course this is continuous. I just
19 skipped ahead for brevity.

20 MR. FUSS: Thank you.

21 BY MR. LEE:

22 Q. Lindsey, as this video goes on, going back to the
23 pantyhose you were wearing, how long had you had those?

24 A. I bought them that night.

1 Q. Where did you buy them at?

2 A. Wal-Mart.

3 Q. Had you washed them?

4 A. No.

5 Q. Was it a Wal-Mart here in town?

6 A. Yes.

7 Q. And then as well, while it's still playing,
8 another follow-up, we talked about where Mr. Chaparro's hands
9 were a little bit before. I failed to ask this, how about
10 did he ever grab your arms?

11 A. Yes.

12 Q. How do you know that?

13 A. I had --

14 Q. How about from this, not from the video that you
15 saw, do you know independent of the video that he grabbed
16 your arms?

17 A. Yes.

18 Q. How do you know that?

19 A. Because I had fingerprint bruises.

20 Q. Which arm?

21 A. Both of them.

22 Q. From Mr. Chaparro?

23 A. Yes.

24 Q. Have you ever been bruised from grabbing before

1 that you can remember?

2 A. Not specifically.

3 Q. I'm going to stop it at 3:30:53 and I'm just going
4 to move ahead in the video to 3:32:49 and stopping it at
5 3:33:22. What did we just see there?

6 A. I was trying to talk to the security guard.

7 Q. About what?

8 A. To tell him what just happened.

9 Q. And who came and intercepted, let's say?

10 A. Tasha.

11 Q. At this point, where did you guys go?

12 A. To the room.

13 Q. Who was there?

14 A. Ashley.

15 Q. And then just open, tell us what happened at that
16 point?

17 A. Ashley was sleeping, we woke her up, and I told
18 her that I was attacked and we needed to go report it to
19 security.

20 Q. Did you do so?

21 A. Yes.

22 Q. What happened with that? How did it go down?

23 A. We found a security guard and told him I was
24 attacked. We went into like a security room and they called

1 911.

2 Q. Did the police respond?

3 A. Yes.

4 Q. Did you write a statement?

5 A. I did not.

6 Q. Was a statement written?

7 A. Yes.

8 Q. How did that work out? What happened?

9 A. Ashley had to write it for me because I was
10 shaking and crying so bad.

11 Q. Was it a long, detailed statement?

12 A. No.

13 Q. And was it intended by you to cover as much detail
14 as we covered today?

15 A. No.

16 Q. Did Ashley write it based on what you were telling
17 her?

18 A. Yes.

19 Q. We talked earlier that you had some drinks at
20 Harrah's before you left, correct?

21 A. Yes.

22 Q. A drink at Brew Brothers that you bought for
23 everybody, correct?

24 A. I bought one for me and Ashley, yes.

1 Q. Did that affect you in any way?

2 A. No.

3 Q. How would you describe your condition, let's say,
4 with regard to alcohol that night?

5 A. I had a few drinks. I was tipsy. I wouldn't
6 drive myself home.

7 Q. Okay. Did it seem to affect your memory at all?

8 A. No.

9 Q. How about when this happened, how do you remember
10 it in such great detail?

11 A. Because as soon as it started happening, my
12 adrenalin sobered me up just like that.

13 Q. Have you experienced any pain in your crouch, in
14 your vagina, anywhere down there?

15 A. After, yes.

16 Q. Explain that to us.

17 A. I was scratched. It hurt to me. I was sore. It
18 felt like a really rough sexual encounter.

19 Q. How do you know you were scratched?

20 A. Because when I would go to the bathroom, it would
21 burn.

22 Q. Do you know how long that lasted?

23 A. A few days.

24 Q. Did it heal on its own within a few days, though?

1 A. Yeah.

2 Q. Were you sore in the same area that you described
3 scratches?

4 A. A little higher, around the scratches, it just
5 felt like all the way up the vagina was just sore.

6 Q. Did the soreness last for how long?

7 A. A few days. I just laid on the couch.

8 Q. Lindsey, afterwards, did you cooperate with
9 police?

10 A. Yes.

11 Q. Did you also have an examination?

12 A. Yes.

13 Q. Do you recall a forensic nurse by the name of
14 Debbie Robison?

15 A. Yes.

16 Q. She performed that examination on you?

17 A. Yes.

18 MR. LEE: One moment, please.

19 THE COURT: Certainly.

20 BY MR. LEE:

21 Q. We were describing these areas, like the Harrah's,
22 and I think I may have asked you before, had you stayed there
23 before?

24 A. No.

1 Q. Is the first time?
2 A. Yes.
3 Q. Is that partly why it was confusing you?
4 A. That hotel's layout is really awful.
5 Q. Would you know it better now?
6 A. No.
7 Q. Have you been back?
8 A. No.
9 Q. Why not?
10 A. I will never be back.
11 Q. Have you been back to Eldorado?
12 A. I try not to.
13 Q. Is it related to this?
14 A. Yes. I can see this plain every time I stop in
15 Reno. I feel heavy and overwhelmed every time I come here.
16 MR. LEE: Lindsey, thank you very much for your
17 time today. That's all the questions I have.
18 THE COURT: It's an opportune time to take a break
19 for lunch. So, ladies and gentlemen, we'll be in recess
20 until 1:30. During this recess, it is your duty not to
21 converse among yourselves or with anyone else on any subject
22 connected with this trial, or to read, watch or listen to any
23 report of or commentary on the trial by any person connected
24 with the trial or by any medium of information, including,

1 without limitation, newspaper, television, radio, Internet or
2 smart phones.

3 You're not to form or express an opinion on any
4 subject connected with this case until it is finally
5 submitted to you after the presentation of evidence and
6 arguments of counsel are concluded. Again, we'll be in
7 recess until 1:30. Please rise for the jury.

8 (The following proceedings were had outside the
9 presence of the jury.)

10 THE COURT: Lindsey, you're welcome to take a
11 break. I ask you during this break that you not discuss your
12 testimony with any other witness or anyone else other than to
13 the attorneys. You're welcome to step down.

14 Just quickly, counsel, anything outside the
15 presence of the jury? First, Mr. Lee on behalf of the State?

16 MR. LEE: Nothing from the State.

17 THE COURT: Mr. Fuss or Ms. Bertschy?

18 MS. BERTSCHY: No, your Honor.

19 THE COURT: Sorry, Mr. Fuss.

20 MR. FUSS: Not related to her testimony. Would
21 the Court or the State be interested in a limiting
22 instruction regarding the DNA findings by Gresko to be read
23 to the jury at the time just before Mr. Gresko testifies as
24 to not to speculate or draw any conclusions from that?

1 THE COURT: Well, I have no interest in a limiting
2 instruction, but I certainly welcome suggestions from counsel
3 about limiting instructions. I also want you to consider
4 whether you want me to give a limiting instruction regarding
5 Mr. Chaparro's conviction for battery with intent to commit
6 sexual assault. I suspect that evidence will come relatively
7 quickly and I want you to consider that.

8 If you have a limiting instruction you want me to
9 give, I suggest that you type it out, put it in printed form
10 and share it with counsel and me.

11 MR. FUSS: Would you prefer it to be on a pleading
12 paper?

13 THE COURT: It doesn't have to be quite so formal
14 as pleading paper, but it's best if we're going to discuss
15 the language of a limiting instruction that we all have it,
16 have an opportunity to read it and consider it.

17 MR. FUSS: I appreciate it. Thank you.

18 MR. LEE: Judge, I misspoke, I do have one thing.
19 The defense in their opening suggested to the jury that they
20 should find Mr. Chaparro guilty of Count Three. I would ask
21 if the Court would be willing to ask the defense to make a
22 record as that. Is that a strategy that they planned with
23 Mr. Chaparro and is it with his consent that they're asking
24 the jury to find him guilty of that count?

1 THE COURT: Ms. Bertschy.

2 MS. BERTSCHY: Thank you, your Honor. According
3 to Hernandez, we don't have to go through that inquiry any
4 further, however, if the Court would like us to.

5 THE COURT: I'm not interested in any way risking
6 invading the attorney-client privilege. I don't believe a
7 specific inquiry is necessary given the caselaw as I
8 understand it. I'm happy to be corrected if you think
9 there's something newer than the case just offered.

10 MR. LEE: No, thank you.

11 THE COURT: I'll see you all at 1:30.

12 (A short break was taken.)

13 THE COURT: This is case CR17-0636, State of
14 Nevada versus Osbaldo Chaparro. Mr. Chaparro is present with
15 his attorney. I show the appearance of the State. I show
16 the appearance of the jurors and the alternates. We're in
17 the middle of the examination of Lindsey. Would you please
18 invite her into the court?

19 Please go ahead and resume your seat. I remind
20 you that you remain under oath. Who is going to engage in
21 cross. Please give your attention to Ms. Bertschy.

22 MS. BERTSCHY: Thank you, your Honor.

23 THE COURT: You're welcome.

24 EXAMINATION

1 BY MS. BERTSCHY:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. Is it okay if I call you Lindsey?

5 A. Yes.

6 Q. Lindsey, on direct, you were talking to the
7 District Attorney about December 16th, 2016, right?

8 A. Yes.

9 Q. It's what this whole case is about, it's from that
10 date and into the 17th?

11 A. Yes.

12 Q. On the 16th, you were going out with friends,
13 right?

14 A. Yes.

15 Q. Your plan was to hang out in downtown Reno and
16 have a good time?

17 A. Yes.

18 Q. To hang out with friends that you weren't going to
19 see for a while?

20 A. Yes.

21 Q. And as part of that was you were going to drink?

22 A. Yes.

23 Q. Which was why you were going to be safe and rented
24 a hotel room?

1 A. Yes.

2 Q. And it was Ashley that rented the hotel room,
3 right?

4 A. I believe she did.

5 Q. And the purpose of that was to make sure you
6 weren't drinking and driving, right?

7 A. Yes.

8 Q. And you got to the hotel room before you went out
9 to drink, right?

10 A. Yes.

11 Q. You were in the hotel room getting ready?

12 A. Yes.

13 Q. And when you were in the hotel room, you were
14 drinking, correct?

15 A. Yes.

16 Q. And you had a few shots, correct?

17 A. Yes.

18 Q. What were you drinking?

19 A. Vodka.

20 Q. So you were having a few shots of vodka and, for
21 lack of a better, primping?

22 A. Yes.

23 Q. Curling your hair, getting ready to go out?

24 A. Yes.

1 Q. And you were celebrating, correct?

2 A. You could say that.

3 Q. On direct, you said you were celebrating, because
4 it was your last day in town.

5 A. Yes.

6 Q. You had to go back to law school, right?

7 A. Yes.

8 Q. And as all the attorneys know, law school is not
9 an easy thing.

10 A. Yes.

11 Q. And sometimes you need to let loose and have a
12 little bit of fun?

13 A. Yes.

14 Q. Now, you mentioned on direct that you've seen the
15 video that we played, Exhibit 1 and 2?

16 A. Yes.

17 Q. And to specify, you've seen the video before of
18 you in the Eldorado Casino?

19 A. Yes.

20 Q. And you've seen a video before of you in the
21 Harrah's walkway and then in the Harrah's Casino, right?

22 A. Yes.

23 Q. And, in fact, you've seen it several times?

24 A. Yes.

1 Q. And as you said, you know you see, remember what
2 had happened that night?

3 A. Yes.

4 Q. And so you keep replaying it in your head?

5 A. Yes.

6 Q. And when you're under stress, you replay it in
7 your head?

8 A. Every day.

9 Q. It's fair to say, especially now while you're
10 waiting for the bar exam, that's a stressful situation?

11 A. Yes.

12 Q. And you're playing it over and over in your head?

13 A. It has nothing to do with the bar, but, yes.

14 Q. Right. But the bar is also a stressful situation,
15 right?

16 A. Yes.

17 Q. At least I know when I took it, it's stressful.
18 So if that's not how you think of it, that's fine. I want to
19 turn to one of the exhibits you were looking at with the
20 State. I'm going to turn your attention to what has been
21 admitted as Exhibit 3. You can see that right there?

22 A. Yes.

23 Q. This is the map that you guys were talking about
24 where you discuss where the Eldorado is located versus the

1 Golden Flower and Harrah's, right?

2 A. Yes.

3 Q. I'm going to zoom in so we can kind of get a
4 little better view of kind of that Eldorado, Harrah's area.
5 Can you see that okay?

6 A. Yes.

7 Q. Now, I want to make sure I understand what you had
8 testified to on direct. Okay. I'm sorry?

9 A. Yes.

10 Q. Thank you. So on direct, you testified that when
11 you were heading back to the Harrah's Casino to go to sleep,
12 you exited the Eldorado Casino, right?

13 A. Yes.

14 Q. And you drew on the map where you exited?

15 A. Yes.

16 Q. And you drew here, correct?

17 A. Yes.

18 Q. Is it fair to say that you actually went out this
19 door on the corner?

20 A. Because it's an aerial view, I can't see any
21 specific doors.

22 Q. All right. Let me see if I can get a better one
23 for you. But you don't remember going off on the side?

24 A. No. It was diagonal.

1 MR. LEE: We don't have any objection if they move
2 to admit.

3 THE COURT: What exhibit number is that?

4 MS. BERTSCHY: 26, your Honor.

5 THE COURT: 26 will be admitted by stipulation.

6 BY MS. BERTSCHY:

7 Q. Lindsey, I'm showing you Exhibit 26. You see
8 that, right?

9 A. Yes.

10 Q. Flip it over. Do you recognize -- if I zoom out,
11 do you recognize this area?

12 A. Yes.

13 Q. And this is the exit that you went out of from the
14 Eldorado Casino, right?

15 A. Correct.

16 Q. And you know that because you can -- I'm circling,
17 you can see the Harrah's sign right there, which is diagonal
18 from it, right?

19 A. Yes.

20 Q. And just for clarification, you can see the
21 crosswalk that you were in as well, right?

22 A. Yes.

23 Q. That's what I just circled. Now, I want to bring
24 you back to, on direct, you said you first remember

1 encountering the man who is in the street when you were in
2 the walkway of Harrah's, right?

3 A. Yes.

4 Q. After having seen the video, you know that you had
5 at least some interaction with him beforehand, right?

6 A. Nothing memorable.

7 Q. But you know from the video that something had
8 happened, right?

9 A. Yes.

10 Q. You testified on direct that at some point when
11 you were in the elevator or the escalator, you had turned
12 around and spoke something briefly while calling your
13 boyfriend?

14 A. Yes.

15 Q. Now, when you were in that walkway, towards
16 Harrah's, you said he was in front of you, right?

17 A. Can you be a little bit more clear?

18 Q. Absolutely. When you're walking on that walkway
19 going towards Harrah's, you testified that at one point he
20 was in front of you, correct?

21 A. Underneath the covered walkway?

22 Q. Yes.

23 A. Yes.

24 Q. And do you recall telling officers that he

1 actually had been just behind you?

2 A. Yes. Right before he was in front of me, he was
3 behind me.

4 Q. Do you recall telling officers that he grabbed you
5 from behind you?

6 A. I don't recall specifically.

7 Q. You don't recall telling Officer Eason that he
8 grabbed you from behind you?

9 A. I'm saying I don't recall specifically telling
10 Officer Eason that.

11 Q. And you don't recall telling Officer Autrey that
12 he grabbed you from behind?

13 A. I don't recall specifically. I just told him
14 exactly how I remembered it and I was in shock when I gave my
15 first statement and I told exactly how I remember it and how
16 it happened.

17 Q. That's fair. If you don't remember, that's
18 absolutely fine. So you don't remember telling Officer Eason
19 you had to turn around in order to see the man who had
20 grabbed you?

21 A. At one point, you can see that I did glance behind
22 me when he was coming right behind my shoulder.

23 Q. Absolutely. My question is: Do you recall when
24 you were speaking with the officer, and let me clarify that,

1 that's the officer that you first spoke to, that you had
2 to -- when he grabbed you from behind, you had to turn around
3 in order to see that man?

4 A. I'm saying I don't recall saying that.

5 Q. Do you recall telling Detective Autrey that in
6 fact when you were grabbed from behind, you thought it was
7 your friend Natasha?

8 A. I don't recall that statement. I'm sorry.

9 Q. If you don't recall --

10 A. I mean, it was three years ago.

11 Q. I appreciate you telling us the truth if you don't
12 recall. You don't recall telling Detective Autrey -- let me
13 go back. You were interviewed by Detective Autrey, right?

14 A. Correct.

15 Q. You were interviewed by him approximately
16 December 20th?

17 A. That is the date.

18 Q. And you remember that date?

19 A. Yes.

20 Q. That was approximately three days after the
21 incident?

22 A. Yes.

23 Q. And for that, you went into the interview room at
24 the Reno police station, right?

1 A. Yes.

2 Q. And you met with Detective Autrey and discussed
3 what had happened?

4 A. Yes.

5 Q. And so you don't remember telling Detective Autrey
6 that the man came up from behind?

7 A. He did come up from behind and then he went
8 towards my front.

9 Q. On direct you said that you didn't notice that
10 Natasha was behind you in the breezeway?

11 A. Correct.

12 Q. That's during the incident, on direct you had
13 absolutely no idea that Natasha was around you, is that
14 right?

15 A. Yes. She was pretty far behind.

16 Q. So when you were in the walkway, did you know she
17 was behind you?

18 A. When it happened, no. I was tunnel vision trying
19 to get inside.

20 Q. And you were tunnel vision trying to get inside
21 before you saw the man or after?

22 A. After the attack.

23 Q. So before you encountered the man on the walkway,
24 I believe you testified on direct that you didn't know

1 Natasha was there?

2 A. I'm saying that, yeah, I did not know she was
3 there.

4 Q. So when you exited from the Silver Legacy area,
5 when you were across from Brew Brothers, you didn't know that
6 Natasha followed after you?

7 A. I did not.

8 Q. You don't recall her saying anything?

9 A. No.

10 Q. And when you left the Silver Legacy, Brew Brothers
11 area, you said on direct that you left because you were ready
12 to go home?

13 A. Yes.

14 Q. You were ready to go to bed?

15 A. Yes.

16 Q. You were tired?

17 A. Yes.

18 Q. Do you recall telling Natasha whether or not you
19 were heading back to your hotel room?

20 A. She was aware. I told her, you can see it on the
21 video, I told her I was going back.

22 Q. You don't recall being told by any employee of
23 Silver Legacy that it's time to go?

24 A. No.

1 Q. So when you started to leave, you don't recall
2 Natasha followed after you?

3 A. No.

4 Q. And you don't recall that John followed after you
5 either?

6 A. No.

7 Q. And when you're in the walkway, again, we've
8 discussed you don't recall Natasha being there. Do you
9 recall telling Detective Autrey that you saw Natasha when you
10 were in the walkway?

11 A. I don't recall that, but -- I don't recall it.

12 Q. Do you recall telling Detective Autrey that you
13 heard her?

14 A. No. It was a blur.

15 Q. And you don't recall telling Detective Autrey that
16 you saw her run up to you?

17 A. I don't recall it specifically.

18 Q. Do you recall telling Detective Autrey that you
19 saw John in the walkway as well?

20 A. He was farther behind Tasha, so, no.

21 Q. You don't recall telling Detective Autrey that?

22 A. No.

23 Q. Have you ever listened to your interview?

24 A. Once maybe.

1 Q. When was that?

2 A. Probably three years ago.

3 Q. Okay. And, obviously, you've seen the video more
4 recently than that, right?

5 A. Yes.

6 Q. Did the District Attorney's Office show you the
7 interview?

8 A. Yes.

9 Q. Did the District Attorney's Office play the video
10 for you in their office?

11 A. Yes.

12 Q. Now, on direct, you said that you had scratches
13 from the incident?

14 A. Right.

15 Q. And I just want to clarify, could you see those
16 scratches?

17 A. No. I could feel them.

18 Q. And you felt them in -- I'm sorry, just to make
19 sure we're on the same page, you felt them in your vagina?

20 A. Yes.

21 Q. You said it stung, right?

22 A. Yes.

23 Q. You were sore for days?

24 A. Yes.

1 Q. And it hurt when you urinated?
2 A. Yes.
3 Q. And you felt that shortly after the incident,
4 right?
5 A. Yes.
6 Q. When you spoke with police officers that night,
7 did you tell the officer that you had scratches?
8 A. I don't believe I did.
9 Q. Did you tell the officer that you were sore for
10 days?
11 A. No. I went to the clinic and got sane, let's say.
12 Q. Did you tell the officer that it stung?
13 A. No.
14 Q. Did you tell the officer that it hurt?
15 A. No.
16 Q. In your interview three days later with Detective
17 Autrey, did you tell him that you had scratches?
18 A. In my vagina?
19 Q. Yes.
20 A. I don't believe I did.
21 Q. You didn't tell him that it was sore?
22 A. I don't believe I did.
23 Q. You didn't tell him that it stung?
24 A. No.

1 Q. And you said you went to the clinic?

2 A. Uh-huh. Yes.

3 Q. And you saw Ms. Robison?

4 A. Yes.

5 Q. And did you tell her about your scratches?

6 A. Yes.

7 Q. And you told you where they were?

8 A. Yes, and then we did the exam.

9 Q. Did she take -- did you tell her that it stung?

10 A. I hadn't experienced -- I don't think I had

11 experienced that before. I went immediately.

12 Q. And that was before you saw Detective Autrey,
13 right?

14 A. What was before?

15 Q. Your examine with Dr. Robison.

16 A. Yes.

17 Q. Let's talk about bruising. Today on direct you
18 said that you had fingerprint bruising on both arms?

19 A. Correct.

20 Q. Do you remember giving a statement in a
21 preliminary hearing?

22 A. Yes.

23 Q. Do you recall what you said about the bruises in
24 your preliminary hearing?

1 A. Do I recall. Word-for-word, no, I don't remember.

2 Q. Do you recall that you said that there were
3 bruises, right?

4 A. Yes.

5 Q. Do you recall whether or not you said they were
6 fingerprint marks?

7 A. I don't recall if I used the word fingerprint. I
8 believed I said and I motioned I had bruises on the back of
9 my arms.

10 Q. On the back of your arms?

11 A. Like right here.

12 Q. On your forearm?

13 THE COURT: So the record reflects what you and
14 she are demonstrating is the deltoid region, the back of her
15 arm.

16 BY MS. BERTSCHY:

17 Q. Is it the back of one arm or the back of both
18 arms?

19 A. They were on both arms.

20 Q. And when did this bruising show up?

21 A. A day or two later.

22 Q. Those bruises, were they there when you were
23 interviewed by Detective Autrey?

24 A. I can't say for certain.

1 Q. Did you tell Detective Autrey that you had
2 bruises?

3 A. No.

4 Q. Did you tell Ms. Robison that you had bruises on
5 your arms?

6 A. I went to the clinic an hour after, so, no, they
7 weren't there.

8 Q. When you spoke with the State about your
9 description of the man, you indicated that your descriptions
10 never changed, right?

11 A. Correct.

12 Q. You indicated on direct what he was wearing,
13 right?

14 A. Today?

15 Q. Yeah.

16 A. I don't specifically -- we talked about dark
17 clothing and white shoes, yes.

18 Q. Do you recall telling Detective Autrey that you
19 couldn't remember what he wore?

20 A. No. I don't recall that.

21 Q. In fact, you don't like being in charge of things
22 like that, right?

23 A. I think that's unfair to say.

24 Q. You think it's unfair to say. Do you think that's

1 something you said?

2 A. I don't recall if I made that exact statement.

3 Q. Okay. Would hearing it make you remember?

4 A. I don't know if hearing it would make me remember
5 what I said three years ago, but, sure.

6 Q. Okay.

7 MS. BERTSCHY: Court's indulgence, your Honor.
8 Your Honor, may I have this marked?

9 THE COURT: Sure.

10 THE CLERK: Exhibit 45 marked for identification.

11 BY MS. BERTSCHY:

12 Q. So, Lindsey, you're saying today that you never
13 told Detective Autrey that, I don't like being in charge of
14 like saying things?

15 A. No. I'm saying today that I said I don't recall
16 saying that.

17 Q. Okay. But playing this would refresh your memory?

18 A. Yes.

19 THE COURT: A challenge, it's not going to be
20 played unless it's admitted. I don't know if you want to
21 offer it for admission? You can use a transcript if you have
22 one to refresh her recollection.

23 MS. BERTSCHY: Thank you, your Honor. Your Honor,
24 I would move for -- if I could have a moment? I don't know

1 if the Court would prefer me to do this outside the presence
2 of the jury since it needs to be marked.

3 THE COURT: Well, please go ahead and approach.

4 (Discussion at the bench.)

5 THE COURT: Ladies and gentlemen, I apologize for
6 the interruption. As you've seen, as I promised you, these
7 are very good attorneys. The rules of evidence are
8 complicated. We talk about issues outside of your presence,
9 because, candidly, we talk about rules that would have no
10 meaning, I suspect, to any of you at any rate. Ms. Bertschy,
11 I offer the witness back to you.

12 MS. BERTSCHY: Thank you, your Honor.

13 BY MS. BERTSCHY:

14 Q. On direct, you indicated that you weren't hesitant
15 to report, correct?

16 A. Yes.

17 Q. And that's to report that something had occurred?

18 A. Yes.

19 Q. And I want to go back to, let's see, to when you
20 were in that walkway. And I'm going to play Exhibit 2 for
21 you.

22 THE COURT: Mr. Lee, I don't know --

23 MS. BERTSCHY: I have it, your Honor. Thank you,
24 your Honor. And just for the record, I'm playing at 3:25:58.

1 BY MS. BERTSCHY:

2 Q. This is right after the incident occurred, is that
3 correct?

4 A. Yes.

5 Q. And in the background where I'm circling here,
6 that's where the Harrah's Casino is, the entrance, right?

7 A. Yes.

8 Q. And you can kind of see, but there's a machine
9 right there that I just circled, right?

10 A. Yes.

11 Q. And I'll press play. And you're walking towards
12 the man at this point?

13 A. I'm walking towards the entrance of the hotel.

14 Q. It's where the man is coming from, right?

15 A. Yes.

16 Q. Is it fair to say you're walking towards the man?

17 A. Yes.

18 Q. Just for the record, that's 36:26:00. And at this
19 point, it's 3:26:03, that's your friend Tasha or Natasha,
20 right?

21 A. Yes.

22 Q. Press play. I'm going to stop at 3:26:08. And
23 that's you walking right past that man, right?

24 A. Yes.

1 Q. So you didn't grab him, right?

2 A. He wasn't a security guard.

3 Q. You didn't grab him, right?

4 A. No, I did not grab him.

5 Q. You didn't tell him, hey, I was just attacked?

6 A. He wasn't a security guard.

7 Q. But you didn't do it, right?

8 A. No.

9 Q. And you continue to walk towards Harrah's?

10 A. Yes.

11 Q. When you were in that walkway, you had your hand

12 on your phone still, right?

13 A. Yes.

14 Q. Because you didn't have pockets in your dress?

15 A. No.

16 Q. You didn't have a purse?

17 A. No.

18 Q. And at that point, you didn't call 911?

19 A. No.

20 Q. Press play. And I'm stopping it at 3:26:12. And

21 the person who just entered into the screen, that's your

22 friend John?

23 A. I don't know him, but his name is John.

24 Q. That's Natasha's friend?

1 A. Yes.

2 Q. Is that a better word for it? So at this point in
3 the walkway, you, that man you didn't know in the green,
4 Natasha and John, right?

5 A. Yes.

6 Q. And you entered into the casino, right?

7 A. Yes.

8 Q. And you were going to go to your friend Ashley,
9 right?

10 A. Yes.

11 Q. And you knew she was in your room?

12 A. Yes.

13 Q. And so your plan was to go to Ashley in order to
14 then go with her to report what had happened?

15 A. Yes.

16 Q. And you said on direct that you were lost?

17 A. Yes.

18 Q. You didn't call Ashley, right?

19 A. I don't know if I called her.

20 Q. You called your boyfriend?

21 A. Yes.

22 Q. You didn't call Ashley?

23 MR. LEE: Objection, asked and answered.

24 THE COURT: Do you want to respond?

1 MS. BERTSCHY: I'll move on, your Honor.

2 THE COURT: Thank you.

3 BY MS. BERTSCHY:

4 Q. You don't remember calling Ashley?

5 A. Right.

6 Q. And to the best of your ability, that's your
7 recollection, you don't remember if you called her?

8 A. Yes.

9 Q. And if you had spoken with her -- I take that
10 back, your Honor. You didn't call Natasha, right?

11 A. No.

12 Q. And you didn't call John, because you didn't have
13 his number, right?

14 A. Right.

15 Q. And when you were on the scene, you call 911?

16 A. No.

17 Q. Now, on direct, you said that you -- at one point
18 you were trying to find a security guard, right?

19 A. Yes.

20 Q. We showed the clip where you're walking towards
21 the security officer?

22 A. Yes.

23 Q. And you found Natasha?

24 A. Right.

1 Q. And you didn't go to that security guard with
2 Natasha?

3 A. Correct.

4 Q. You went upstairs to your room to get Ashley?

5 A. To get Ashley.

6 Q. On direct, you mentioned when you were first
7 grabbed by that man, your initial thought was you were going
8 to be kidnapped and being raped?

9 A. Yes. That's what goes through your mind when a
10 strange man comes up behind you and attacks you.

11 Q. And you gave a statement at a preliminary hearing,
12 right?

13 A. Yes.

14 Q. And you were under oath?

15 A. Yes.

16 Q. And you swore to tell the truth and nothing but
17 the truth?

18 A. Yes.

19 Q. And at that preliminary hearing, and I'm referring
20 to page 35, line 7 through 10, you told Autrey you thought
21 you were being kidnapped?

22 A. Yes.

23 Q. Did you didn't say that you thought you were being
24 raped?

1 A. At that time, no, I did not say that to him.

2 Q. And when you were interviewed by Detective Autrey,
3 you said, well, I thought I was being kidnapped, right?

4 A. Yes.

5 Q. And you didn't tell him that you thought you were
6 being raped?

7 A. No.

8 MR. LEE: Objection, asked and answered.

9 THE COURT: Do you want to respond?

10 MS. BERTSCHY: Yes, your Honor. I hadn't asked
11 whether or not at the interview --

12 THE COURT: Whether you did or not, I'll give you
13 some latitude. Did you hear the question?

14 THE WITNESS: Yes.

15 THE COURT: Do you have an answer to the question?

16 THE WITNESS: I said yes.

17 BY MS. BERTSCHY:

18 Q. Now, when the man approached you, he grabbed
19 you -- on direct, I believe you said he grabbed you with one
20 hand, right?

21 A. I said from behind.

22 Q. But when he grabbed you, and correct me if I'm
23 wrong, I thought I heard you say on direct that he grabbed
24 you with one hand, his right hand?

1 A. And his other hand was on my butt.

2 Q. That's correct.

3 A. Yes.

4 Q. He didn't grab you like a bear hug?

5 A. Like a bear hug? I think there was a lot of
6 grabbing. I don't know at the very beginning, was it a bear
7 hug, I don't think so. It was just like one whole big
8 commotion.

9 Q. And I'll take a step back. I made a motion,
10 because for me a bear hug means you're grabbing someone with
11 both hands.

12 A. Yes.

13 Q. Is that your idea of what a bear hug is as well?

14 A. Yes.

15 Q. Do you recall telling Detective Autrey that the
16 man grabbed you like a bear hug?

17 A. Do I recall telling him that? No.

18 Q. On direct from the State, you indicated that he --
19 the man grabbed your breast?

20 A. Yes.

21 Q. He didn't put his hand underneath your dress,
22 right? Let me take that back. He didn't put his hand
23 underneath from the top of your dress towards your breast?

24 A. No.

1 Q. He never ripped the top of your dress, correct?
2 A. Correct.
3 Q. And just so I'm clear, we saw the dress, it's --
4 and you said that it was clingy, correct?
5 A. Yes.
6 Q. Silver, long sleeves?
7 A. Yes.
8 Q. Went about mid thigh?
9 A. Yes.
10 Q. On me it's really hard to tell, right, we're not
11 the same height, so it would look a little different on you,
12 obviously?
13 A. Right.
14 Q. Would you say that your dress went to about mid
15 thigh?
16 A. Yes.
17 Q. And it was a stretchy material, right?
18 A. Yes.
19 Q. And so he didn't stretch your dress in order to
20 get inside of it to your breast?
21 A. No.
22 Q. He didn't scratch your breast?
23 A. No.
24 Q. He didn't bruise your breast?

1 A. I don't remember having any bruises.

2 Q. And today you're sure that he touched your breast?

3 A. Yes. He was holding on to it.

4 Q. Do you recall at your preliminary hearing saying

5 you didn't recall whether he had grabbed your breasts?

6 A. Yes.

7 Q. When the officer you spoke with that evening, you

8 didn't tell him that the man had grabbed your breast?

9 A. No.

10 Q. You didn't tell -- you didn't include it in a

11 statement, right?

12 A. In what statement?

13 Q. In a statement that you signed?

14 A. No.

15 Q. Let's go to that statement. You said on direct

16 that your friend wrote that statement, right?

17 A. Yes.

18 Q. That was Ashley?

19 A. Yes.

20 Q. You signed that statement, right?

21 A. I believe so.

22 Q. Would seeing the statement refresh your memory?

23 A. Yes.

24 MS. BERTSCHY: Your Honor, may I have this marked?

1 THE COURT: Yes, you may.

2 THE CLERK: Exhibit 46 marked for identification.

3 MS. BERTSCHY: Your Honor, may I approach the
4 witness?

5 THE COURT: You may. Please approach freely.

6 BY MS. BERTSCHY:

7 Q. Lindsey, I'm handing you a document. Please don't
8 discuss what's on it. Okay. The document I just handed to
9 you, do you recognize it?

10 A. Yes.

11 Q. Is that the statement that we just were talking
12 about?

13 A. Yes.

14 Q. And I'm going to have you go to the bottom of that
15 first page.

16 A. Okay.

17 Q. Do you see an area where it's asking for a
18 statement or for a signature?

19 MS. BERTSCHY: Your Honor, may I approach?

20 THE WITNESS: Yes.

21 THE COURT: Yes.

22 BY MS. BERTSCHY:

23 Q. Thank you. Has your memory been refreshed?

24 A. Yes.

1 Q. Did you sign this statement?

2 A. Yes.

3 Q. And you indicated on direct that even though you
4 didn't write it, it's what you had talked about, what you had
5 told Ashley had happened?

6 A. I told her what to write, yes.

7 Q. And you told her to write that a man had attacked
8 you, right?

9 A. Yes.

10 Q. And so you said that -- Court's indulgence. In
11 your statement, you said he grabbed you from behind?

12 A. Yes.

13 Q. We talked about you were wearing a dress. In your
14 statement, you wrote that you were wearing pants.

15 A. I don't think I would have said I was wearing
16 pants.

17 Q. You don't think that it says you were wearing
18 pants?

19 A. Whether or not it says I was wearing pants, I was
20 wearing pantyhose.

21 Q. Yes. But it says you were wearing pants, right?
22 So you're saying that's not what you told Ashley?

23 MR. LEE: Objection, nonresponsive.

24 THE COURT: I'm sorry. Your objection is that

1 this witness is nonresponsive to her question?

2 MR. LEE: I'm sorry. The question was
3 argumentative. Excuse me, your Honor.

4 THE COURT: Do you want to respond to
5 argumentative?

6 MS. BERTSCHY: Yes, your Honor. It's not
7 argumentative. We're really impeaching her with the
8 statement.

9 THE COURT: Ladies and gentlemen, argumentative
10 refers to it being a matter for argument. The cross
11 examination is a professional one and with polite tone. I'm
12 going to overrule the objection, argumentative. That means
13 you can answer the question. Perhaps you would like to ask
14 the question again?

15 BY MS. BERTSCHY:

16 Q. Did you tell Ashley that you were wearing pants?

17 A. I don't know if I told her I was wearing pants. I
18 was wearing pantyhose.

19 Q. You obviously weren't wearing pants, correct?

20 A. Correct.

21 Q. So if the statement said you were wearing pants,
22 that would be wrong?

23 A. That would be wrong. I was not wearing pants.

24 Maybe pants was short for pantyhose. I don't know. I didn't

1 change.

2 Q. So for pantyhose, when you were talking on direct,
3 you were able to show the State where that line was located
4 in the video when you were in Harrah's, right?

5 A. Yes.

6 Q. Do you remember circling that?

7 A. Yes.

8 Q. You had discussed with the State that your
9 pantyhose kept rolling down, is that correct?

10 A. Yes.

11 Q. I want to make sure I'm clear with what you're
12 talking about, because I couldn't see you from back there.
13 So when we're talking about that your pantyhose rolled down
14 throughout the night, we're not talking like they would roll
15 down to your knees or anything?

16 A. Correct.

17 Q. So the furthest they rolled down was to about your
18 hips, right?

19 A. Yes.

20 Q. Your low hips.

21 A. Yes.

22 Q. But your hips kept it up?

23 A. Yes.

24 Q. But obviously throughout the night, you're

1 concerned about it, so you're trying to adjust to make sure
2 they didn't roll down?

3 A. Yes.

4 Q. And I believe you said on direct that towards the
5 end of the night, you weren't worrying about where they were?

6 A. I stopped pulling them up to my belly button, yes.

7 Q. And you were obviously still fidgeting, though,
8 with the bottom of your skirt?

9 A. Yes.

10 Q. To make sure it was down far enough?

11 A. Yes.

12 Q. Now, when the incident occurred, you said on
13 direct that the man pulled down your pantyhose?

14 A. Yes.

15 Q. And the man pulled down your pantyhose to about
16 your waist?

17 A. Yes.

18 Q. Or below to your crotch area?

19 A. Pretty low, but he was just able to slip his hand
20 in.

21 Q. But he pulled it down, you're saying, to your
22 crotch area?

23 A. Yes.

24 Q. But when you started walking towards Harrah's,

1 your pantyhose were already back up?

2 A. They were very low, like underneath my hips.

3 Q. But they weren't down below your waist? They
4 weren't below your crotch?

5 A. No.

6 Q. And I want to be clear, because I heard several
7 different things during direct with what happened. So I want
8 to make sure we're on the same page. So you're saying that
9 the man put his hand down your tights or your pantyhose?

10 A. Yes.

11 Q. And I heard the word hands being used. Did he put
12 both hands down your tights?

13 A. No.

14 Q. And so in the statement where it says there were
15 hands that were down your pants, that's wrong, right?

16 A. What statement?

17 Q. Your statement that you signed.

18 A. If it says the word plural hands, it was hand.

19 Q. And if you said it to the other detective, hands,
20 it was hand, right?

21 A. Yes.

22 Q. Now, I just want to be clear. So let's break this
23 down. Okay. So if I'm talking about a hand, there's
24 fingertips, there's a palm and there's a wrist, right?

1 A. Correct.

2 Q. So when you say his hand, you're talking about was
3 in your tights, when they're not in your vagina or anything
4 like that, you're saying it's your fingertips, right?

5 A. I'm saying my fingertips?

6 Q. His fingertips.

7 A. You're going to have to repeat your question.

8 Q. Absolutely. I want to make sure I'm clear. So
9 when you're saying that his hand was in your pantyhose, let's
10 go with before you're saying it was in your vagina, is it his
11 fingertips that entered into your pantyhose?

12 A. It was almost to his wrist.

13 Q. Okay. So what about his palm?

14 A. Yes.

15 Q. Was his entire palm?

16 A. Pretty much. You know, it took a lot of hand
17 motion to put his fingers in my vagina.

18 Q. Do you recall saying in your preliminary hearing
19 that it was only half of your palm?

20 A. I don't recall exactly if I said half or full
21 about the palm.

22 Q. And his entire hand didn't go in your vagina?

23 A. His entire hand in my vagina?

24 Q. Yes.

1 A. No.

2 Q. On direct, I believe you said something about
3 fingers, right?

4 A. Yes.

5 Q. What do you mean by fingers?

6 A. He put his fingers in my vagina, fingers.

7 Q. 1, 2, 3.

8 A. Two. About two fingers.

9 Q. I'm going to the Golden Flower, back to where you
10 were eating there.

11 A. Yes.

12 Q. On direct, you said it's a Thai restaurant?

13 A. I believe it's Thai, Chinese.

14 Q. They serve all sorts of things, right?

15 A. Correct.

16 Q. But you remember clearly you ate pad Thai?

17 A. I always order pad Thai, yes.

18 Q. You mentioned on direct that you Ubered over
19 there?

20 A. Yes.

21 Q. You said you were eating there with Ashley -- I'm
22 sorry -- with Natasha and John, right?

23 A. Yes.

24 Q. So Ashley wasn't there?

1 A. Correct.

2 Q. And you remember that you Ubered over there now.
3 When you were speaking with officers, did you recall that you
4 had Ubered over there?

5 A. I don't recall.

6 Q. And I want to make sure we're on the same page.
7 Uber means that someone typed into an app to get a car
8 service, right?

9 A. Yes.

10 Q. Where you're driven to a location?

11 A. Yes.

12 Q. And dropped off?

13 A. Yes.

14 Q. Much like a taxi?

15 A. Yes.

16 Q. You're not the one who called up the Uber?

17 A. I did not call.

18 Q. Do you recall who did?

19 A. Tasha or John.

20 Q. But you don't know?

21 A. No.

22 Q. You mentioned that shortly after the incident, you
23 went and got the SART exam or you saw Ms. Robison, right?

24 A. Yes.

1 Q. And, I'm sorry, this is a personal issue, but did
2 you go to the bathroom before you saw Ms. Robison?

3 A. Yes.

4 Q. Was that after the incident?

5 A. Yes. At Harrah's.

6 Q. Okay. At Harrah's. Did you go to the bathroom
7 again when you were at where you went with Ms. Robison?

8 A. I don't remember if I went to the bathroom again.

9 Q. Did she give you any medication?

10 A. I don't recall.

11 Q. Do you recall if she prescribed you with anything?

12 A. I don't think she did.

13 Q. That's because you would have had to fill it up
14 somewhere, right?

15 A. Yeah. I didn't have anything filled for me.

16 Q. And that's by her or any other doctor?

17 A. Right.

18 Q. For this incident?

19 A. Right.

20 Q. Now, Ms. Robison also gave you her card, right?

21 A. I'm sure she did.

22 Q. And to call if there's any issues, right?

23 A. Yes.

24 Q. Did you call her and tell her there were any

1 problems?

2 A. No.

3 Q. And the detectives gave you their cards, right?

4 A. Yes.

5 Q. The officer on the scene and then Officer Autrey,
6 right?

7 A. Yes.

8 Q. And to call if you had any issues or wanted to say
9 anything else, right?

10 A. Yes.

11 Q. And you never called the first officer on the
12 scene, Officer Eason, right?

13 A. No.

14 Q. After the incident, you didn't call Detective
15 Autrey after your interview, right?

16 A. I believe we spoke once or twice.

17 Q. But you didn't call him to say, hey, I have these
18 injuries that I didn't tell you about earlier?

19 A. No.

20 Q. You didn't tell him, hey, I have these photographs
21 that I took of my bruises?

22 A. Right.

23 Q. Because you didn't take any photographs?

24 A. No.

1 Q. You didn't have anybody else take any photographs?

2 A. No.

3 Q. I want to clarify, on direct there were some
4 questions about when you were at Brew Brothers having a
5 drink. Did you share that one drink?

6 A. No. I bought myself one and Ashley one.

7 Q. And on direct, you said that you were a little
8 tipsy, right?

9 A. Yes.

10 Q. Is it fair to say you were a little drunk?

11 A. I had a few drinks and I would not drive myself.

12 Q. Is it fair to say -- would you consider yourself,
13 knowing your level of intoxication, that you were drunk?

14 A. I would say that I was pretty tipsy.

15 Q. Do you recall at the preliminary hearing you said
16 that you were drunk?

17 A. Did I make that statement? I would say I was
18 pretty tipsy and would not drive myself home.

19 Q. Would reviewing your preliminary hearing testimony
20 refresh your memory?

21 A. Yes.

22 MS. BERTSCHY: Your Honor, may I have this marked?

23 THE CLERK: Exhibit 47 marked for identification.

24 MS. BERTSCHY: Your Honor, may I approach?

1 THE COURT: Of course. Please approach freely.

2 BY MS. BERTSCHY:

3 Q. Lindsey, I just handed you a document. If you
4 look at the front, you can tell it's your preliminary hearing
5 transcript, right?

6 A. Yes.

7 Q. And at your preliminary hearing you were under
8 oath, right?

9 A. Yes.

10 Q. And you swore to tell the truth, the whole truth
11 and nothing but the truth?

12 A. Yes.

13 Q. And I'm going to have you turn to page 32, line 1
14 through 2, just read silently, please, and look up when
15 you're done. Does that refresh your memory?

16 A. Yes.

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

18 THE COURT: Yes.

19 MS. BERTSCHY: Let the record reflect that I'm
20 taking away the preliminary hearing transcript.

21 BY MS. BERTSCHY:

22 Q. Lindsey, you'd agree with me that in your
23 preliminary hearing, you said you were a little drunk?

24 A. Yes. I said I was a little drunk.

1 MS. BERTSCHY: Court's indulgence.

2 BY MS. BERTSCHY:

3 Q. Lindsey, do you recall after the incident when you
4 were walking back to Harrah's, do you recall adjusting your
5 pantyhose at all?

6 A. I do remember pulling down my dress continuously.

7 Q. Sorry. From the incident to you walking into
8 Harrah's, you didn't pull up your pantyhose, right?

9 A. No. I pulled down my dress.

10 Q. And we can see you walked back, right?

11 A. Yes.

12 Q. You weren't running?

13 A. No.

14 Q. Do you recall telling Detective Autrey that you
15 were running?

16 A. Yes.

17 Q. Do you recall telling Officer Eason that you were
18 running?

19 A. Yes.

20 Q. But clearly in the video, you weren't running?

21 A. No. I was walking.

22 MS. BERTSCHY: Court's indulgence.

23 THE COURT: Go ahead.

24 MS. BERTSCHY: Thank you. I appreciate the

1 Court's indulgence.

2 I neglected to ask you, I showed you on myself, I
3 want to make sure we're clear with how far down your
4 pantyhose were. Would it be possible, your Honor, to have
5 Lindsey stand up and show the Court and show the jury where
6 her pantyhose were?

7 THE COURT: Are you able to do that, ma'am?

8 THE WITNESS: Yes.

9 THE COURT: Would you please?

10 THE WITNESS: What would you like me to show?

11 BY MS. BERTSCHY:

12 Q. Lindsey, if you could please show where the
13 pantyhose were, how far down they went?

14 A. They were about at my low hips right here.

15 Q. And when you had said like your crotch, you said
16 that it was around your crotch?

17 A. It lines up like right here.

18 Q. I want to make sure we're clearly on the same
19 page. Somewhere around your crotch area, around your hip
20 area?

21 A. Yes.

22 MS. BERTSCHY: For the record, if the record could
23 reflect that Ms. Lindsey did have her hands indicate around
24 her hip, crotch area was where the pantyhose went.

1 THE COURT: The jury saw what it saw.

2 BY MS. BERTSCHY:

3 Q. Lindsey, you had said that you had at some point
4 been trying to bring your pantyhose up towards your waist and
5 belly button?

6 A. At the beginning of the night, yes, I put them up
7 by my belly button.

8 Q. And then they were around your low hips, right?

9 A. Yes.

10 Q. If I could just have her stand and show just
11 because her hips are going to be a different placement than
12 mine.

13 THE COURT: I'll let you do it one more time, if
14 you could, ma'am.

15 THE WITNESS: My hips are right here.

16 MS. BERTSCHY: Thank you. I appreciate that.
17 Nothing further, your Honor.

18 THE COURT: Redirect. Take a moment. Take a big
19 deep breath. Pull that microphone over in front of you again
20 and give your attention to Mr. Lee.

21 MR. LEE: Thank you, Lindsey.

22 REDIRECT EXAMINATION

23 BY MR. LEE:

24 Q. The man who grabbed you, the defense kept

1 referring to the man, let's not be hiding anything here, who
2 was that man?

3 A. The defendant.

4 Q. Who you identified before?

5 A. Multiple times.

6 Q. So the man who grabbed you is Mr. Osbaldo
7 Chaparro?

8 A. Yes.

9 Q. The incident, quote, that the questions were based
10 on was a sexual assault that we saw in the video?

11 A. And we watched multiple times.

12 Q. What about when his hands were on your breast, you
13 recall questions about that from me and from Ms. Bertschy,
14 right?

15 A. Right.

16 Q. Correct me if I'm wrong, at the time that
17 happened, you don't actually recall it, right?

18 A. No.

19 Q. And I think you were clear about that in direct
20 examination, correct?

21 A. Correct. It wasn't that hand I was worried about.

22 Q. Why is that?

23 A. Because his other hand was in my vagina.

24 Q. Having watched the video we watched, is it clear

1 to you now where his hand was at?

2 A. Yes.

3 Q. 46 is a -- I believe you had refreshed your
4 recollection before with your written statement, correct?

5 A. It's the written statement, yes.

6 Q. And the question was to you, you called it that
7 you were wearing pants, right?

8 A. Yes.

9 Q. What's the context of that?

10 MS. BERTSCHY: Objection.

11 THE COURT: What's the legal basis?

12 MS. BERTSCHY: Your Honor, if we're -- it's
13 unclear if we're refreshing or impeaching.

14 THE COURT: Please don't give a speaking
15 objection. What's the legal basis?

16 MS. BERTSCHY: Improper impeachment.

17 THE COURT: Do you want to respond?

18 MR. LEE: I move to admit 46, your Honor.

19 THE COURT: Well, that's not a response to the
20 objection. I'll sustain the objection.

21 MR. LEE: I move to admit 46.

22 THE COURT: Any objection?

23 MS. BERTSCHY: Yes, objection, hearsay.

24 THE COURT: Do you want to respond?

1 MR. LEE: Sure. It was an item used to refresh
2 her recollection. I have a right as the opposing party to
3 move for its admission.

4 THE COURT: No, you don't. You may if you want to
5 authenticate a hearsay statement. Hearsay, ladies and
6 gentlemen, is a statement made out of court. There can be
7 prior consistent statements, prior inconsistent statements.
8 That are used in impeachment -- that it was used to refresh
9 recollection doesn't make it nonhearsay. I sustain a hearsay
10 objection. You may ask another question.

11 MR. LEE: Your Honor, if I could give one basis,
12 then, the correct basis, then it would be used to counter
13 what they tried to impeach her with.

14 THE COURT: So you want a prior consistent
15 statement --

16 MR. LEE: Correct.

17 THE COURT: -- that was previously recorded by
18 this witness, if I understand you.

19 MR. LEE: Correct.

20 THE COURT: Would you like to then authenticate
21 it?

22 BY MR. LEE:

23 Q. What is it that you're looking at?

24 A. The statement that my friend Ashley wrote.

1 Q. It was on your behalf?

2 A. Yes, I told her what to write.

3 Q. And she wrote to the best you know what you had
4 asked her to write?

5 A. Yes.

6 MR. LEE: With that, your Honor, then I move to
7 admit.

8 THE COURT: Any objection?

9 MS. BERTSCHY: No objection, your Honor.

10 THE COURT: 46 is admitted.

11 BY MR. LEE:

12 Q. So let me just ask you, the part about pants that
13 you see there, do you see that part, Lindsey?

14 A. Yes.

15 Q. What's the context of that?

16 A. She was describing where he put his hand.

17 Q. And what was your -- what did you say?

18 A. I told her to write that he put his hand in my
19 pants, which was the only pant I was wearing which was
20 pantyhose.

21 Q. Is that wrong by any means? Is that incorrect, I
22 should say?

23 A. Technically, no.

24 Q. He put his hands in your pants, is that correct?

1 A. Yes.

2 Q. Would you still say the same thing today?

3 A. Yes.

4 Q. About the bruising on the arms, did the officer in
5 your initial interview -- do you recall how long the
6 interview was?

7 A. I think it was very brief.

8 Q. Do you recall if he even asked you about anything
9 like that?

10 A. We didn't go into detail like that.

11 Q. Do you recall testifying of that three years ago
12 in April of 2017 at the preliminary hearing?

13 A. Yes.

14 Q. And you testified that it was bruising?

15 A. Yes.

16 Q. Is that consistent with what you talked about
17 today?

18 A. Yes.

19 Q. With regard to scratches or injuries, I think you
20 had called them, was a scratch within your genital opening?

21 A. Can you rephrase?

22 Q. Sure. Where was the scratch?

23 A. Inside of my vagina.

24 Q. Did Detective Autrey ask you about that

1 specifically?

2 A. No, he did not.

3 Q. Did he ask you if it stung?

4 A. No, he did not.

5 Q. Did he ask you if it was sore?

6 A. No, he did not.

7 Q. What's your recollection of the stinging, the
8 soreness or the hurting while urinating? On a scale of one
9 to 100 today, how well do you remember that?

10 A. Very vividly.

11 Q. How long from the time that Mr. Chaparro attacked
12 you to the time that you actually did report it? Do you
13 recall how long was that, roughly?

14 A. Probably less than 45 minutes, maybe. Enough time
15 to go get my friend and go down back and get a security
16 guard.

17 Q. The man in green wasn't a security guard that you
18 could tell, was he?

19 A. No. I don't know who he is at all.

20 Q. Looking back now, do you wish you had told him or
21 are you happy with what you did?

22 A. I don't think I need to tell a random stranger, a
23 random male that I was just attacked. I wanted to tell
24 somebody with authority to help me.

1 Q. Let's be clear as well about the pantyhose. Did
2 he pull them down to your knees?

3 A. No.

4 Q. How did he get his hands inside of you?

5 A. He went from underneath and pushed them in. It's
6 a very thin material. You don't have to rip them down to get
7 inside.

8 Q. Could he just simply without pulling them down
9 manipulate them a little bit to get in?

10 A. Yes.

11 MS. BERTSCHY: Objection, calls for speculation
12 and leading.

13 THE COURT: I sustain a leading objection. Ladies
14 and gentlemen, I'll ask you not to consider the answer that
15 was offered in response to that. Questions, of course, don't
16 provide evidence. Answers only provide evidence. I sustain
17 the objection. Go ahead, Mr. Lee, and ask a different
18 question.

19 BY MR. LEE:

20 Q. The context is, did he pull them down?

21 A. No.

22 Q. How did he get his hand inside?

23 A. By like pushing underneath and doing like a
24 scooping movement.

1 Q. You said how many fingers in your vagina?

2 A. Two.

3 Q. Let me show you Exhibit 2 and I'll play about
4 30 seconds and I'll ask a question. At 3:25:26 beginning.

5 (Video played at this time.)

6 I'm stopping it at 3:26:06. From your memory, as
7 well as from Exhibit 2, did Mr. Chaparro come from behind?

8 A. Yes.

9 Q. Did he grab you?

10 A. Yes.

11 Q. Did he stop you?

12 A. Yes.

13 Q. Which hand did he put inside your pantyhose?

14 A. His right.

15 Q. Which hand or the fingers attached to it did he
16 put inside your vagina?

17 A. His right.

18 Q. Does that video show the truth of what happened?

19 A. Yes.

20 Q. Does it show the truth of what you recall as well?

21 A. Yes.

22 MR. LEE: Thank you, your Honor.

23 THE COURT: Recross?

24 MS. BERTSCHY: Court's indulgence.

1 THE COURT: Take a moment.

2 RECROSS EXAMINATION

3 BY MS. BERTSCHY:

4 Q. Lindsey, I want to be clear, and I'm sorry, this
5 morning when you were being asked questions by the State, I
6 heard you say that when his hands were inside you, it was
7 skin on skin, right?

8 A. Yes.

9 Q. And so when you were just talking to the State
10 about it being over your pantyhose --

11 A. I never said that.

12 Q. So you're saying his hand was between your body
13 and your pantyhose, right?

14 A. His hand was on my skin.

15 Q. So I just want to make sure that's clear that it's
16 not your body, your pantyhose, his hand?

17 A. There was no barrier.

18 MS. BERTSCHY: Nothing further, your Honor.

19 THE COURT: May this witness be excused?

20 MR. LEE: Yes, your Honor.

21 THE COURT: Thank you very much for your time.
22 You may step down. Your next witness.

23 MS. NORTINGTON: Your Honor, the State calls
24 Natasha Evans.

1 THE COURT: Thank you, Ms. Northington.

2 MS. BERTSCHY: Your Honor, as she is so coming up,
3 may I clear the well of the exhibits?

4 THE COURT: Yes, go ahead.

5 (One witness sworn at this time.)

6 THE COURT: Please go ahead and have a seat,
7 Ms. Evans. Once you're comfortably seated there, go ahead
8 and pull the microphone in front of your face. Give your
9 attention to Ms. Northington.

10 THE WITNESS: Hello.

11 NATASHA EVANS

12 called as a witness and being duly sworn did testify as
13 follows:

14 DIRECT EXAMINATION

15 BY MS. NORTHINGTON:

16 Q. Could you state your name and spell your last for
17 the record?

18 A. Natasha Evans, E-v-a-n-s.

19 Q. Do you have a name you go by?

20 A. Tasha.

21 Q. Is it all right if I call you Tasha?

22 A. Yeah.

23 Q. Where do you currently live?

24 A. In Carson City.

1 Q. How long have you lived in Carson City?

2 A. My whole life.

3 Q. Do you know a woman named Lindsey?

4 A. Yes.

5 Q. How long have you known Lindsey?

6 A. I knew of her in high school and we became friends
7 probably like when I was 25-ish.

8 Q. What year would that be?

9 A. Oh, gosh, 2015.

10 Q. So is it fair to say you were friends in December
11 of 2016?

12 A. Yes.

13 Q. And directing your attention to the night of
14 February -- I'm sorry -- Friday, December 16th of 2016, do
15 you recall what happened that night?

16 A. I do.

17 Q. And who were you with that night?

18 A. I was with Lindsey, Ashley and John.

19 Q. And generally speaking, where were you guys that
20 night?

21 A. We started at -- well, I met with Lindsey and
22 Ashley at Brew Brothers and then we went over to the Golden
23 Flower to eat and went back to Brew Brothers.

24 Q. And after the second time you went to Brew

1 Brothers, did you guys eventually leave that area?

2 A. We did.

3 Q. About what time was that?

4 A. It was early, like in the morning, morning time.

5 Q. Of the 17th?

6 A. Yes.

7 Q. Was it as Brew Brothers was closing?

8 A. I believe so. I think they were telling us to get
9 going, so --

10 Q. And who were you with at that point?

11 A. Lindsey, Ashley and John. No. I'm sorry.
12 Lindsey and John.

13 Q. Where was Ashley at?

14 A. I think she went back to the room that they had at
15 Harrah's.

16 Q. Did Ashley leave earlier in the night?

17 A. Yes. She left us from the Golden Flower. She
18 didn't come back to Brew Brothers.

19 Q. So at that point, it was just you and Lindsey and
20 John?

21 A. Yes.

22 Q. Did Lindsey end up leaving you and John?

23 A. Yes.

24 Q. Why?

1 A. She said she wanted to go back to the room. She
2 was tired.

3 Q. Did you immediately go with her?

4 A. No, not immediately.

5 Q. Did you go towards Harrah's after her?

6 A. Yes.

7 Q. How soon after her, do you think?

8 A. It didn't feel that long. It felt like a couple
9 of minutes after she left, maybe less than that.

10 Q. When you say she left, you're talking about the
11 area outside of Brew Brothers?

12 A. Yes.

13 Q. When you left, did you walk through the Eldorado?

14 A. Yes. I believe so.

15 Q. Towards Virginia Street?

16 A. Yes.

17 Q. And at any point, did you see Lindsey ahead of you
18 while you were still in the Eldorado?

19 A. No, not inside the casino.

20 Q. When you left the casino, where were you headed?

21 A. Over to Harrah's.

22 Q. And when you left the Eldorado, did you see
23 Lindsey right away?

24 A. No.

1 Q. At some point while walking from the Eldorado to
2 Harrah's, did you see Lindsey?

3 A. I did.

4 Q. Where was she located when you saw her?

5 A. She was under the arch in front of the Harrah's,
6 not the Reno arch, but the Harrah's tunnel going into the
7 entrance.

8 Q. Is it fair to say it's the covered walkway into
9 Harrah's?

10 A. Yes.

11 Q. What was Lindsey doing or what was happening when
12 you saw Lindsey under the covered archway?

13 A. There was a man around her. She kind of looked
14 like she was struggling a little bit. So I kind of panicked
15 and just started yelling, no, and running in her direction.

16 Q. Where were you when you first noticed something?

17 A. I was on the opposite side of the street by the
18 Reno arch.

19 Q. Is this Virginia Street?

20 A. Yes.

21 Q. Were you crossing Virginia Street as you saw the
22 struggle?

23 A. Yes.

24 Q. You said you started screaming. What were you

1 yelling?

2 A. Just, no, no, no. That's all I remember.

3 Q. Why did you scream no, no, no?

4 A. I didn't recognize the guy and we hadn't seen or
5 talked to him throughout the night and it wasn't her
6 boyfriend.

7 Q. Is it fair to say you thought there was something
8 wrong?

9 A. Yes.

10 Q. Did you eventually end up under that covered
11 archway?

12 A. I did.

13 Q. And what happened before you reach Lindsey?

14 A. He let her go and walked the opposite direction of
15 me and I walked towards Harrah's, because she started walking
16 away from me into the casino.

17 Q. So did you and the man walk past each other?

18 A. We did.

19 Q. And did you see him?

20 A. I did.

21 Q. Did you see his face?

22 A. I did.

23 Q. Do you see that man in the courtroom today?

24 A. I do.

1 Q. Could you please point to him and identify an
2 article of clothing he's wearing?

3 A. He's in the teal shirt over there.

4 MS. NORTINGTON: Your Honor, may the record
5 reflect she identified the defendant?

6 THE COURT: She has.

7 BY MS. NORTINGTON:

8 Q. This was the man that was in the physical struggle
9 with Lindsey?

10 A. Yes.

11 Q. Did you follow Lindsey into Harrah's?

12 A. I did.

13 Q. And were you able to catch up with her?

14 A. Eventually, I found her, yes.

15 Q. What was her demeanor like when you found her?

16 A. She was absolutely hysterical, not really making
17 any sense. She was just crying hysterically.

18 Q. And after you found her, what did you and Lindsey
19 do?

20 A. We went back to the room.

21 Q. Why did you guys go back to the room?

22 A. She kept saying she wanted Ashley. We weren't
23 very close at the time. So I had no idea what happened. She
24 just wanted to go back to the room. She wouldn't tell me

1 what happened immediately.

2 Q. All she wanted was Ashley?

3 A. Yes.

4 Q. After you went up to the room and got Ashley, what
5 did you guys do next?

6 A. We went down and found security. Well, I got up
7 to the room and she went into the bathroom with Ashley and
8 told Ashley what happened. At this point, I still really
9 didn't know exactly what happened, just what I saw. And then
10 Ashley came out of the bathroom and said we needed to find
11 security and make a police report.

12 Q. Was 911 called?

13 A. I believe once we found security, we called 911.

14 MS. NORTHINGTON: Court's indulgence, your Honor.
15 No further questions.

16 THE COURT: Cross examination.

17 MS. BERTSCHY: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MS. BERTSCHY:

20 Q. Good afternoon.

21 A. Hello.

22 Q. Is it all right if I call you Tasha or would you
23 prefer to be called Natasha?

24 A. Tasha is fine.

1 Q. When you were talking with the State, you were
2 asked about why you left the Silver Legacy the second time.

3 A. Yes.

4 Q. You were originally in the bar at Brew Brothers
5 and left to go to the Golden Flower?

6 A. Yes.

7 Q. And you said you had been around where the slots
8 were hanging out?

9 A. Yes.

10 Q. And you guys were having a good time?

11 A. Yes.

12 Q. That was your goal was to have some drinks and
13 have fun?

14 A. Right.

15 Q. You were with Lindsey and Ashley and John and at
16 least one other person at some point, correct?

17 A. Yes.

18 Q. And when you were at the slots, you were told to
19 leave, right?

20 A. I believe so.

21 Q. By someone?

22 A. I think it was a general security was kind of
23 telling everyone to make their way out of there.

24 Q. They told you go right or left, right?

1 A. Yes.

2 Q. And that was shortly after Lindsey left?

3 A. Yes.

4 Q. And at that point, it was just you and John at the
5 slots, right?

6 A. Yes.

7 Q. So John came with you?

8 A. Yes.

9 Q. To leave? And you were heading back to Harrah's?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. And that was a plan to meet up at Harrah's?

14 A. Yes.

15 Q. Now, when you mentioned that you were in the
16 walkway looking at Harrah's entrance, you said you could see
17 Lindsey, right?

18 A. Yes.

19 Q. And you couldn't see exactly what was happening,
20 right?

21 A. No. Their backs were to me.

22 Q. But you saw a man and Lindsey, right?

23 A. Yes.

24 Q. Your mind is going to the worst place, right?

1 A. Yes.

2 Q. That's why you're screaming no?

3 A. Yes.

4 Q. And when you get to the Harrah's walkway, you're
5 not running, right?

6 A. I ran up to the Harrah's walkway and then stopped
7 running. I don't run.

8 Q. And, I apologize, I don't mean to be insensitive
9 about this.

10 A. Right.

11 Q. It's hard for you to run, right?

12 A. Yes.

13 Q. So running, you're not sprinting like an
14 eight-minute mile?

15 A. Right.

16 Q. You're trying to get up to her?

17 A. Yes.

18 Q. And at some point, you're laughing, right?

19 A. Yes.

20 Q. When you saw the man, you knew it was the same
21 man -- that's a bad question. Let me start over. When you
22 were approaching that Harrah's walkway, you saw a man come
23 towards you, right?

24 A. Yes.

1 Q. And you knew that was the man who was near
2 Lindsey, right?

3 A. Yes.

4 Q. When you see him, you don't grab him?

5 A. No.

6 Q. You don't go after him?

7 A. No.

8 Q. You don't call 911?

9 A. No.

10 Q. You don't call John, hey, come get him?

11 A. No.

12 Q. And you don't see John run after him?

13 A. Right.

14 Q. You don't see John go grab him?

15 A. Right.

16 Q. You don't see John call 911?

17 A. Correct.

18 Q. And you had a cell phone, right?

19 A. I did.

20 Q. Now, you continue to walk towards Lindsey, you're
21 walking to catch up to her, right?

22 A. Yes.

23 Q. And you see her go towards Harrah's, towards the
24 entrance?

1 A. Yes.

2 Q. And she's walking, right?

3 A. Yes.

4 Q. And there's another man coming out of Harrah's,
5 correct?

6 A. I don't -- it was just -- all I remember is her
7 and the one man that was in there.

8 Q. I'm going to play something for you. This is
9 Exhibit 2 for the record.

10 MS. BERTSCHY: Court's indulgence while I set this
11 up. For the record, I'm playing it at 3:26.

12 (Video played at this time.)

13 BY MS. BERTSCHY:

14 Q. In the middle here, that's Lindsey, right?

15 A. Yes.

16 Q. And that's, again, the Harrah's walkway we've been
17 talking about? This area, it's the Harrah's walkway we were
18 talking about?

19 A. Yes.

20 Q. I'll press play. And pausing it at 3:26:01,
21 that's you at the bottom of the screen, right?

22 A. Yes.

23 Q. And I'm going to circle as well. That's Lindsey
24 right there?

1 A. Yes.

2 Q. Heading towards Harrah's. I'm circling the man.
3 That's the one you saw, correct?

4 A. Yes.

5 Q. Press play, pause at 3:26. That's you walking
6 right by him?

7 A. Correct.

8 Q. Not turning to him or talking to him or saying
9 anything to him?

10 A. Right.

11 Q. Pressing play. Pausing it at 3:26:07. That's you
12 bending over, right?

13 A. Yes.

14 Q. Pressing play again and pause at 3:26:11. That's
15 John that I'm circling, right?

16 A. Correct.

17 Q. And you can see where I just circled there's
18 another man coming, right?

19 A. Yes.

20 Q. Did you stop and talk to him?

21 A. No.

22 Q. You didn't stop and say, hey, I think something
23 happened with my friend?

24 A. At this point, I didn't know exactly what

1 happened.

2 Q. Absolutely. And then you go into Harrah's,
3 correct?

4 A. Correct.

5 Q. You're trying to find Lindsey?

6 A. Yes.

7 Q. And you can't find her for at least a half hour,
8 right?

9 A. I don't know how long it took me to find her.

10 Q. It took a while, right?

11 A. Yeah, I think so.

12 Q. You didn't call her?

13 A. No. Well, I did call her multiple times, but she
14 wasn't answering her cell phone.

15 Q. She didn't answer her phone?

16 A. No.

17 Q. Did you call -- and you didn't call Ashley?

18 A. I had Ashley's phone.

19 Q. You had Ashley's phone?

20 A. Yes.

21 Q. So you didn't call her obviously?

22 A. No.

23 Q. And eventually you found Lindsey, right?

24 A. Yes.

1 Q. And you found her in Harrah's Casino?

2 A. Yes.

3 Q. And you didn't stop her from talking to the
4 security guard, right?

5 A. I don't remember if she was talking to a security
6 guard or approaching a security guard. I just remember her
7 being with someone. I don't know how long she had been
8 there, if she just walked up or --

9 Q. You weren't trying to stop her from talking to
10 anyone?

11 A. No.

12 Q. And you weren't trying to get her away from the
13 security guard, right?

14 A. Right.

15 Q. You were just excited that you found her?

16 A. Yes.

17 Q. And so you start talking to her and you were
18 trying to figure out what happened?

19 A. Yes.

20 Q. And she wouldn't talk to you about it?

21 A. Correct.

22 Q. She didn't say, hey, let me talk to the security
23 guard?

24 A. No.

1 Q. She told she wanted to go up to the room?

2 A. She didn't tell me anything. She was hysterically
3 crying and trying to find the room at this point.

4 Q. And so she didn't tell you anything about not
5 trying to talk to security?

6 A. Not at that point.

7 Q. Just to clarify, when you went to the Golden
8 Flower, you went there by Uber?

9 A. I honestly don't remember how we got there.

10 Q. You don't remember?

11 A. I usually walk or take a cab. It's not that far
12 of a walk, but I don't remember how we went over there.

13 Q. Would it surprise you to know that you took an
14 Uber?

15 A. It wouldn't surprise me.

16 Q. You don't remember who called -- I mean put it in
17 the app?

18 A. I don't remember.

19 Q. You remember who was there?

20 A. Yes.

21 Q. That's really clearly who you remember was at the
22 Golden Flower?

23 A. Yes.

24 Q. I believe you testified on direct, I want to make

1 sure I heard you, all right?

2 A. Uh-huh.

3 Q. When you were at the Golden Flower, you were
4 eating, right?

5 A. Yes.

6 Q. You guys had been drinking and you were hungry?

7 A. Yes.

8 Q. It was you, John?

9 A. Yes.

10 Q. Lindsey?

11 A. Yes. Ashley ended up meeting us over there.

12 Q. At one point, there's four of you, including
13 Ashley?

14 A. Correct.

15 Q. At the Golden Flower?

16 A. Correct.

17 Q. And Ashley left to go back?

18 A. Right.

19 Q. To Harrah's?

20 A. Correct.

21 Q. And then you -- the three of you went back to --
22 heading towards Brew Brothers?

23 A. Correct.

24 Q. Had you been drinking that night?

1 A. I had a few drinks, yes.

2 Q. What do you mean by a few drinks?

3 A. I wasn't like feeling super drunk, but I wouldn't
4 have driven.

5 Q. 1, 2, 3 drinks?

6 A. It was three years ago. I have no idea how many
7 drinks I had.

8 Q. Do you remember drinking at Brew Brothers?

9 A. Yes.

10 Q. Do you remember drinking before Brew Brothers?

11 A. Yes.

12 Q. And was that in the Harrah's hotel room?

13 A. Yes.

14 Q. So that was with Lindsey and Ashley?

15 A. No. I was downstairs at the bar.

16 Q. Not in the hotel room, at the hotel?

17 A. Correct.

18 Q. You met up with them?

19 A. I met with Lindsey and Ashley for a couple of
20 minutes and dropped my stuff down and met a few friends at
21 the bar at Harrah's and met up with Lindsey and Ashley later
22 in the night.

23 Q. The plan was for you to stay at the hotel room
24 there?

1 A. Yes.

2 Q. That's why you put your stuff in there?

3 A. Yeah.

4 Q. You didn't have any of the shots with the girls in
5 the hotel room?

6 A. No.

7 Q. Okay.

8 MS. BERTSCHY: Court's indulgence. I have no
9 further questions, your Honor.

10 THE COURT: Redirect.

11 MS. NORTINGTON: Very briefly, your Honor.

12 REDIRECT EXAMINATION

13 BY MS. NORTINGTON:

14 Q. Tasha, after the attack, your priority was finding
15 Lindsey?

16 A. Yes.

17 Q. You didn't grab that man because you were trying
18 to find Lindsey?

19 A. Yes.

20 Q. You didn't know what had happened at that point?

21 A. I just knew I didn't know who that was and he was
22 not my friend and we weren't with him prior to that and I
23 think I was maybe less than a minute behind her, which is
24 kind of a very short time to meet someone. That's just --

1 yeah.

2 Q. So during cross examination, Ms. Bertschy asked
3 you about the man that was near Lindsey.

4 A. Yes.

5 Q. Would you it be fair that he wasn't just near
6 Lindsey?

7 A. It looked like she was struggling to get him off
8 of her when I saw them.

9 Q. When Ms. Bertschy said a man, it's not a random
10 man?

11 A. Correct.

12 Q. It's this man?

13 A. Yes.

14 Q. The defendant?

15 A. Yes.

16 MS. NORTHINGTON: Nothing further.

17 THE COURT: Recross?

18 MS. BERTSCHY: Nothing. Thank you, your Honor.

19 THE COURT: May this witness be excused?

20 MS. NORTHINGTON: Yes, thank you, your Honor.

21 THE COURT: Thank you very much for your time.

22 You may step down.

23 Ladies and gentlemen, we're going to take the
24 afternoon recess. This is a opportune time. During this

1 recess, it is your duty not to converse among yourselves or
2 with anyone else connected with this trial or to read, watch
3 or listen to any report of or commentary on the trial by any
4 person connected with the trial or by any medium of
5 information, including, without limitation, newspaper,
6 television, radio, Internet or smart phones. You're not to
7 form or express an opinion on any matter connected with this
8 case until it is finally submitted to you after the
9 presentation of evidence and arguments of counsel are
10 concluded. We'll be in recess until 3:15, ladies and
11 gentlemen.

12 (The following proceedings were had outside the
13 presence of the jury.)

14 THE COURT: This continues to be case number
15 CR17-0636, the State of Nevada versus Osbaldo Chaparro. Mr.
16 Chaparro is present as are both of his attorneys and the
17 attorneys for the State.

18 I'd like to place into the record the colloquy
19 that occurred related to the objections and/or use of
20 Exhibit 45. As I understand it, Exhibit 45 is a zip drive
21 that contains an audio recording and/or video recording, I
22 don't really know, of the interview of the complaining
23 witness in this case. Is that accurate, Ms. Bertschy?

24 MS. BERTSCHY: That is correct, your Honor. Just

1 for the record, it's the interview at the police station with
2 Detective Autrey.

3 THE COURT: All right. And you sought to utilize
4 that, as I understood it, to seek to refresh the recollection
5 of Lindsey, correct?

6 MS. BERTSCHY: Your Honor, I believe that's where
7 there's some disagreement. I believe that initially Lindsey
8 had -- and I was using it for the purpose of impeachment,
9 because initially Lindsey had said she wouldn't have said
10 that she didn't say that. Then she said, I don't remember
11 saying that. So my purposes was for impeachment, because she
12 said she didn't remember the discussion, so it would need to
13 be used for refreshment.

14 THE COURT: Well, the juncture at which you sought
15 to use it was you indicating you -- you had asked the
16 question, would hearing the interview refresh your
17 recollection? You would agree with me about that?

18 MS. BERTSCHY: Yes, your Honor.

19 THE COURT: So you sought to use it to refresh her
20 recollection. Whether you at some other time considered
21 using it for impeachment or not, the record will reveal, I
22 believe, that you sought to use it to refresh her
23 recollection. Do you agree?

24 MS. BERTSCHY: Your Honor, I agree. I would note

1 that I -- yes, your Honor, I would agree.

2 THE COURT: All right. I asked you to approach,
3 interrupted you, we approached and had a colloquy. The
4 colloquy went to the effect of, judge, I want to use it. I
5 understood your communication to me to be, I want to use it
6 to refresh her recollection. To which I said, that's fine,
7 the jury can't hear it. If you have a transcript of it, you
8 could use the transcript. To which you said, there is no
9 transcript.

10 I would simply offer to you, I don't mean this in
11 an argumentative way, but that's not my issue that there is
12 no transcript. That doesn't make it more admissible. And so
13 I indicated to you, then, what I indicate now, which is you
14 can't ring the bell with the jury of an unadmitted exhibit
15 whether it's to refresh recollection or otherwise.

16 I appreciate that you had a challenge in that you
17 don't have a transcript available and/or you have not had the
18 opportunity to have her listen to it with you so she could
19 authenticate it for the purposes of admitting it.

20 But I just want the record to reflect, again, my
21 ruling is, no one can, as it were, ring the bell with a piece
22 of evidence, sort of like showing the jury a picture before
23 it's admitted, and that's why I would not let you use that to
24 have her listen to it in the presence of the jury if that

1 makes any sense. I don't know if there's any other record
2 you want to make about it.

3 MS. BERTSCHY: Your Honor, that is correct. I had
4 just requested to be able to excuse the jury in order to --

5 THE COURT: I don't recall that occurring. I
6 don't recall you saying to me, I want to excuse the jury.
7 I'm sorry. We may have a different recollection about it.
8 But I have no recollection of you saying, I want to have the
9 opportunity to do it outside the presence of the jury. Is
10 there any other record you want to make?

11 MS. BERTSCHY: Your Honor, I just want to be clear
12 that my purpose was for impeachment. I know we had the
13 discussion now to be used for recollection based on my last
14 statement to this Court that it was for the purpose of
15 refreshment.

16 THE COURT: Well, I don't recall you ever saying
17 you wanted to impeach her with it. I could be wrong. I
18 sometimes miss things that are said. Sometimes we think
19 things in our head and don't say them. So I'm not accusing
20 anybody of any misconduct.

21 To be clear, as I understand it, you just
22 confirmed when you -- when we had the colloquy at the bench,
23 your indication to me was you wanted to refresh her
24 recollection with it.

1 Counsel, let me offer to all of you, because a
2 similar confusion, I think, happened for Mr. Lee. This area
3 of what is hearsay and how can hearsay be used for
4 impeachment is a complicated one, I think we can agree. This
5 exhibit may be admissible or not for a prior consistent
6 statement, prior inconsistent statement, impeachment or
7 otherwise.

8 At the point at which you approached, you said you
9 wanted to refresh her recollection with it. Let's be clear,
10 I heard nothing of a hearing outside the presence of the jury
11 or to use it as impeachment. I'll let you make whatever
12 record you want.

13 MS. BERTSCHY: Your Honor, I believe we made the
14 record of what had occurred.

15 THE COURT: Okay. Mr. Lee, do you want to be
16 heard on this issue?

17 MR. LEE: No, thank you.

18 THE COURT: All right. Is there anything else we
19 need to discuss outside the presence of the jury in your
20 opinion on behalf of the State?

21 MR. LEE: No, your Honor.

22 THE COURT: Mr. Fuss, on behalf of the defense?

23 MR. FUSS: Your Honor, prior to the lunch break,
24 you asked me, perhaps, to prepare a limiting instruction

1 regarding the prior bad act that has been admitted -- been
2 ruled on by the Court. Having reviewed it with Mr. Petty,
3 who is our appellate deputy, and recalling the order in the
4 record that it's coming in for propensity, I don't -- I
5 can't -- we couldn't figure out a way to limit it.

6 Now, I don't know if the question was to invite
7 whether or not you would reconsider its relevance and whether
8 at this juncture in the trial is it more prejudicial than
9 probative based on the fact that we have admitted to the jury
10 that he is going to -- that he's admitting to Count Three in
11 this case.

12 But other than that, I have nothing to provide.
13 If the Court can give me some other guidance, I'll keep
14 looking. I'll beat the bushes.

15 THE COURT: Well, let us set the stage for our
16 conversation in this way: I believe it's Allen is the case
17 in which the Supreme Court, correct me if you all remember a
18 different name, indicated that prior incidents of sexual
19 misconduct are admissible in subsequent cases alleging sexual
20 misconduct, because sexual misconduct in the words of the
21 Supreme Court is so unusual or out of the ordinary that proof
22 of intent is difficult. And because proof of intent is
23 difficult, propensity evidence which would otherwise be
24 squarely inadmissible as prior bad act or prior character

1 evidence, so-called, is admissible.

2 The context in which this issue has been discussed
3 in this trial is that you wanted to bring it up during voir
4 dire and I wouldn't let you.

5 MR. FUSS: Understood.

6 THE COURT: And you made a comment about it, Ms.
7 Bertschy did, during opening statement -- whoever made the
8 opening statement. I apologize.

9 MR. FUSS: I did for the record, your Honor.

10 THE COURT: Thank you. And so the cat is out of
11 the bag, as it were. If you desired it, I would consider a
12 limiting instruction. To my eye, it's much like whether or
13 not I give the limiting instruction about whether or not Mr.
14 Chaparro testifies. I think it's a defense -- an appropriate
15 tactical choice to decide you want me to underline and bold
16 it for the jury or not. And I am not going to underline and
17 bold propensity evidence for the jury unless you ask me to.

18 I believe I could give them an instruction to the
19 effect of, ladies and gentlemen, at the point at which the
20 evidence comes in, I think there's been a suggestion that the
21 prior victim will testify and that she will then testify that
22 there was a conviction in this case. So if I'm accurate
23 about when that is going to come in, if it were to come in at
24 that juncture, I could consider giving the jury an

1 instruction to the effect of:

2 Ladies and gentlemen, this evidence is not
3 available for you to use to decide that Mr. Chaparro is a bad
4 man. He is not on trial for the incident that occurred in
5 2011. He is on trial for an incident that is alleged to have
6 occurred in 2017. The sole purpose for which you can use
7 this evidence is to determine Mr. Chaparro's intent in 2017
8 and whether or not there was a common scheme or plan or
9 common intent in the prior incident that would illustrate to
10 you his intent in 2017.

11 I would consider an instruction to that effect,
12 but I would offer to you that I think it's a two-edge sword
13 in the way you and Mr. Petty may have discussed it. Again,
14 I'm underlining and bolding this thing that is a new area of
15 the law, to my eye, in Nevada and it's powerfully negative
16 evidence against the defendant.

17 MR. FUSS: At this point, I believe if we offered
18 the instruction, we would offer it as part of the jury
19 instructions.

20 THE COURT: Okay.

21 MR. FUSS: So I will supplement that. If I could
22 request from the reporter if she could give me a copy just of
23 your soliloquy?

24 THE COURT: What I just said.

1 MR. FUSS: Thank you.

2 THE COURT: I'll ask, Ms. Koetting, if you could
3 with whatever alacrity you may give it, Ms. Koetting, prepare
4 a section of the record just as Mr. Fuss requested, because
5 I'm not sure I could repeat it again.

6 MR. FUSS: I know I can't.

7 THE COURT: Do you want to be heard on this issue,
8 Mr. Lee?

9 MR. LEE: Simply if they wish to do it at jury
10 instruction time or before, we're in favor of either one. I
11 think a limiting instruction is appropriate. We'll just work
12 with the defense on that.

13 THE COURT: I appreciate that. You had mentioned
14 a limiting instruction on another topic. Since we're on the
15 topic of limiting instructions, have you considered that?

16 MR. FUSS: We have, and if I do, it will, again,
17 come in during jury instructions. We'll provide it then.
18 But at this point and prior to any testimony, I don't
19 anticipate providing that.

20 THE COURT: Okay. Fair enough. Are there any
21 other matters we need to discuss? I'll see you at 3:15.

22 (A short break was taken.)

23 THE COURT: This is again CR17-0636, State of
24 Nevada versus Osbaldo Chaparro. Mr. Chaparro is present with

1 his attorneys. I show the appearance of the State. I show
2 the appearance of the jury and the alternates. Your next
3 witness, please.

4 MR. LEE: Thank you. Ashley Derosa.

5 (One witness sworn at this time.)

6 THE COURT: Please be seated, ma'am. Once you're
7 comfortably seated, pull the microphone in front of your face
8 and give your attention to Mr. Lee.

9 MR. LEE: Thank you, your Honor.

10 ASHLEY DEROSA

11 called as a witness and being duly sworn did testify as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. LEE:

15 Q. Could you state and spell your first and last name
16 for the record?

17 A. Ashley Derosa, A-s-h-l-e-y, D-e-r-o-s-a.

18 Q. Ashley, do you know Lindsey?

19 A. I do.

20 Q. What's your relationship like with Lindsey?

21 A. She's been my best friend for ten years now.

22 Q. Were you with Lindsey on the night of starting
23 December 16th of 2016?

24 A. I was.

1 Q. At some point, -- were you staying together with
2 Lindsey at the Harrah's?

3 A. Yes. We knew we were going out that night and
4 there was no way we were going to drink and drive, so we
5 decided to get a room and be the responsible ones.

6 Q. What do you do for a living, Ashley?

7 A. I'm a registered pediatric nurse.

8 Q. Where at?

9 A. Saint Mary's.

10 Q. Going back to that night, did you go to Brew
11 Brothers?

12 A. We did.

13 Q. Do you recall around what time?

14 A. I couldn't recall the time.

15 Q. I'm going to show you what has been marked as
16 Exhibit 5. Showing you page 1 of Exhibit 5, do you recognize
17 that?

18 A. I do.

19 Q. Does that picture depict you?

20 A. It does.

21 Q. What is that picture from?

22 A. My license.

23 Q. If you could turn the page to page two? Is that
24 you -- excuse me -- let's go to the next page, page three of

1 that exhibit. Does that depict you as well?

2 A. It does.

3 Q. What is the one on the left?

4 A. My license. The one on the right is from that
5 night. I had red hair at that time.

6 Q. Thank you. So before you go into Brew Brothers,
7 do they ask you for your license?

8 A. Yes. They take your license. They scan, I
9 believe, the barcode on the back. And then they use a little
10 flashlight to make sure it's a proper Nevada ID. And then
11 they take your picture.

12 Q. Ashley, seated to my left here in what I call a
13 greenish blue shirt, do you see the individual at the table
14 with that color?

15 A. I can't see.

16 THE COURT: There's a monitor in your way. Go
17 ahead and stand up.

18 THE WITNESS: I'm very short.

19 BY MR. LEE:

20 Q. Do you see the greenish blueish shirt?

21 A. I do.

22 Q. Do you recognize him?

23 A. No.

24 Q. Have you ever seen him before?

1 A. Not that I recall.

2 Q. That day at Brew Brothers when you checked in, did
3 you see him come in behind you?

4 A. No.

5 Q. Did you see him in line behind you?

6 A. Not that I recall.

7 Q. Did you ever pay attention to anybody coming in
8 say 6 or 7 minutes behind you?

9 A. No. We were focused on what we were doing.

10 Q. Did you ever see Lindsey talk to that individual?

11 A. Not that I remember, no.

12 Q. At what point -- as I understand, you returned to
13 Harrah's a little earlier than others, right?

14 A. I did.

15 Q. When was that?

16 A. We went and ate at Golden Flower and then I
17 decided I need sleep, so I went back to the room. When I got
18 back to the room, because she had my stuff, I knew her number
19 by heart, hers is simple, and I was able to call it from the
20 hotel room phone to let her know I made it to the room.

21 Q. Did you go to sleep?

22 A. I did.

23 Q. When is the next time you woke up?

24 A. I woke up to yelling and crying. I heard Tasha

1 screaming, wake up, wake up.

2 MS. BERTSCHY: Objection.

3 THE COURT: What is the objection?

4 MS. BERTSCHY: Hearsay.

5 THE COURT: Do you want to respond?

6 MR. LEE: I think it would be the affect on the
7 listener.

8 THE COURT: In my view, the affect on the listener
9 is not relevant unless it's offered for the truth. There may
10 be another hearsay response, but if that's the response.

11 BY MR. LEE:

12 Q. Were you awoken by somebody else?

13 A. I was woken up by Natasha and Lindsey coming into
14 the room.

15 Q. I'm not going to ask what they were saying,
16 necessarily, at this point, but was it their words that woke
17 you up?

18 A. No.

19 Q. What was it?

20 A. Chaos.

21 Q. Explain that if you could.

22 A. Very loud, crying, just kind of hearing sounds,
23 gasping.

24 Q. From who?

1 A. Lindsey.

2 Q. Had you ever seen Lindsey in that kind of
3 condition?

4 A. No.

5 Q. Did you two talk about what had just happened?

6 A. I said, what's going on? What happened?
7 Obviously, I had just woken up, so it's crazy to wake up to
8 that sound. I remember looking between Natasha and Lindsey
9 and I kept saying, what happened? What happened? Lindsey
10 could not speak. Her eyes were so swollen, filled with
11 tears. And Tasha just kind of looked stunned. Lindsey
12 looked in shock.

13 I kind of pulled Lindsey aside. I asked her
14 again, what happened? Tell me what happened. I know I put
15 my hands on her shoulders at one point and said, tell me what
16 happened. And she said there was a guy and, of course, just
17 that statement alone kind of made my heart drop.

18 MS. BERTSCHY: Objection, calls for a narrative at
19 this point.

20 THE COURT: You want to break it up a little bit?

21 MR. LEE: Yes.

22 THE COURT: Go ahead.

23 THE WITNESS: Sorry.

24 THE COURT: You're okay.

1 BY MR. LEE:

2 Q. Ms. Derosa, so she told you what happened?

3 A. Yes.

4 Q. What did you guys do as a result of that?

5 A. I told Natasha and Lindsey that we needed to go
6 downstairs and tell somebody what happened, that we needed to
7 alert somebody. At that point, we went downstairs, found a
8 security guard at the Harrah's, told that security guard.
9 They pulled us upstairs in another part of the casino to a
10 little security room.

11 Q. Did Lindsay's demeanor change at any point during
12 this time?

13 A. No.

14 Q. She was still acting that same way you described
15 earlier?

16 A. In shock, yeah.

17 MR. LEE: That's all the questions I have. Thank
18 you.

19 THE COURT: Cross examination.

20 MS. BERTSCHY: Thank you, your Honor.

21 CROSS EXAMINATION

22 BY MS. BERTSCHY:

23 Q. Ashley, I'm going to move to where you can see.

24 A. Does the chair go up?

1 THE COURT: It may, but it doesn't have a lever.
2 You have to actually turn the base. So, no, I can't raise it
3 for you. I'm sorry. Go ahead.
4 BY MS. BERTSCHY:
5 Q. You can see me now, right?
6 A. Yes, I can see you now.
7 Q. I want to talk to you about December 16th of 2016,
8 okay, that's the date that you were just talking to the State
9 about?
10 A. Yes.
11 Q. And you indicated that you went to Harrah's and
12 got a room, right?
13 A. Yes.
14 Q. Because you guys were going to be drinking? Is
15 that a yes?
16 A. Yes. Sorry.
17 Q. And you wanted to be safe, to not drink and drive,
18 right?
19 A. Yes.
20 Q. And you were drinking in that hotel room before
21 you went out, right?
22 A. Yes.
23 Q. You were taking shots?
24 A. Yes.

1 Q. While you're primping and getting ready?
2 A. It was more hair curling than shots at that point.
3 Q. While you're curling your hair, right?
4 A. Yes.
5 Q. And you had a few shots, right? It was more than
6 one?
7 A. Say maybe three.
8 Q. And were you also drinking vodka or something
9 else?
10 A. Vodka.
11 Q. And then you guys went out, right?
12 A. Yes.
13 Q. And you started first by going to Brew Brothers?
14 A. No. We went to Novi first.
15 Q. First you went to Novi?
16 A. Yes.
17 Q. And since Novi doesn't exist -- Novi does exist,
18 right? What is Novi?
19 A. A country bar.
20 Q. It's a bar, right?
21 A. Yes.
22 Q. It's located in the casinos downtown?
23 A. Yes. It's right down the hallway from the Brew
24 Brothers.

1 Q. In the Silver Legacy?

2 A. The Row is what it's called at this point.

3 Q. It's the name for all three casinos, Circus
4 Circus, Silver Legacy, Eldorado.

5 THE COURT: Hang on a second you're doing fine,
6 but you have to wait until she finishes asking her questions
7 before you begin answering. In polite conversation, we step
8 on one another. It's a way to cue that we're listening
9 actively. I'll just ask you to slow down, let her finish her
10 question before you begin your answer. Go ahead, Ms.
11 Bertschy.

12 MS. BERTSCHY: Thank you, your Honor.

13 BY MS. BERTSCHY:

14 Q. I'm sorry if I'm not going fast enough. The Row,
15 as you call it, that's the area of the Circus Circus,
16 Eldorado and Silver Legacy, right?

17 A. Yes.

18 Q. Because they're all connected, right?

19 A. Yes.

20 Q. You first went to Novi and were you drinking
21 there?

22 A. I believe we had one drink there.

23 Q. And, I'm sorry, when you say we, who do you mean
24 by we?

1 A. Me and Lindsey.

2 Q. So you had a drink and Lindsey had a drink?

3 A. I believe so. I know for a fact that I had one
4 drink called a Kaylee drink. It's something I can remember
5 very easily from that night.

6 THE COURT: Can you spell that by chance?

7 THE WITNESS: K-a-y-l-e-e.

8 BY MS. BERTSCHY:

9 Q. As a former bartender, I'm embarrassed to say,
10 what is a Kaylee drink?

11 A. One of the girl dancers there came up with a
12 beverage and it's basically just sugar in a cup.

13 Q. With some alcohol?

14 A. A little, but mostly sugar. It lets you keep mind
15 dancing.

16 Q. So you had at least that drink and it's your
17 recollection that Lindsey had a drink as well?

18 A. I believe so.

19 Q. And then you went to Brew Brothers, right?

20 A. Yes.

21 Q. And you had a drink at Brew Brothers?

22 A. I do not recall having a beverage at Brew
23 Brothers. We were dancing.

24 Q. Do you recall Lindsey drinking?

1 A. Not at Brew Brothers.

2 Q. Do you recall Tasha drinking?

3 A. I couldn't say for certain.

4 Q. And it's fair to say --

5 A. I was dancing a lot.

6 Q. You're trying to have a good time?

7 A. Yes.

8 Q. You're celebrating, everyone is out having a good

9 time downtown?

10 A. Yes.

11 Q. Then you went to Golden Flower, correct?

12 A. Yes.

13 Q. You actually went there, right?

14 A. I did.

15 Q. You ate there?

16 A. I did. I went in a separate way. Natasha,

17 Lindsey and the guy that Tasha was seeing took either an Uber

18 or a cab and I met them at Golden Flower.

19 Q. Let's break that down. Okay?

20 A. Okay.

21 Q. What I think I heard you say is you all went to

22 Golden Flower, you just went there by different routes?

23 A. Different routes.

24 Q. So you know that Tasha, Lindsey and John took an

1 Uber, right?

2 A. Or a taxi, some kind of a ride there.

3 Q. And you walked?

4 A. Yes.

5 Q. When you got there, you ate at Golden Flower,

6 right?

7 A. I had chicken pad Thai.

8 Q. You recall it vividly?

9 A. Yes, the only thing I get there.

10 Q. When you ate your chicken pad Thai --

11 A. Yes.

12 Q. -- you were with Lindsey?

13 A. Yes.

14 Q. You were with John?

15 A. Yes.

16 Q. And you were with Tasha?

17 A. Yes.

18 Q. And you left?

19 A. Yes.

20 Q. That's when you went back to Harrah's?

21 A. Yes.

22 Q. And you don't know exactly what happened between

23 when you left the group at Golden Flower to Harrah's?

24 A. I was not there.

1 Q. Absolutely, because you were not there, you don't
2 know exactly what happened, but you woke up to a lot of
3 sounds, right?

4 A. Yes.

5 Q. You used a lot of verbs. I believe you said you
6 heard loud screaming, crying it was not something you were
7 used to hearing from those two?

8 A. No.

9 Q. It was not from Natasha, it was from Lindsey?

10 A. The crying and the heavy breathing was from
11 Lindsey. The, wake up, was from Tasha. Lindsey was not
12 really speaking at that point.

13 Q. You said on direct that Lindsey is the one who
14 told you what happened?

15 A. She is.

16 Q. Isn't it true that it was Natasha who told you
17 what happened?

18 A. I recall having a conversation with Lindsey and
19 her telling me what happened.

20 Q. When you -- you spoke to officers, correct?

21 A. Yes.

22 Q. In fact, you spoke with Detective Autrey, right?

23 A. I couldn't tell you their names.

24 Q. You spoke to an officer, right?

1 A. Yes.

2 Q. And you spoke to an officer the night of the
3 incident, correct?

4 A. Yes.

5 Q. And then you also spoke to an officer a few days
6 after the incident?

7 A. Yes.

8 Q. On December 22nd, correct?

9 A. Yes.

10 Q. And you told that officer then that it was Natasha
11 who told you what happened?

12 A. Okay.

13 Q. Right?

14 A. I don't recall.

15 Q. I want to make sure I heard you correctly. When
16 you were talking to the State -- I'm sorry -- on direct, you
17 said that you're the one who then in the group said we need
18 to tell someone, right?

19 A. Yes.

20 Q. You're the one who said we should go to security?

21 A. I believe so, yes.

22 Q. And you had a phone in your room, correct?

23 A. Yes.

24 Q. Because you used that phone to call Natasha to

1 say, hey, I'm okay?

2 A. Yes. There was a room in the hotel room -- there
3 was a phone in the hotel room.

4 Q. So when you hear that something had happened, you
5 didn't pick up the phone to call for security?

6 A. I wouldn't know what number to dial for security.

7 Q. And you didn't pick up the phone to call 911?

8 A. I'm a nurse, so 911 means health problem
9 immediately to me.

10 Q. You don't think it means if you're going to report
11 a crime that you call 911?

12 A. I would look for a police number. That's just to
13 me personally. I've never had to report a crime prior to
14 this incident.

15 Q. So when you went to report a crime, you decided to
16 go to security, correct?

17 A. Yes.

18 MS. BERTSCHY: Court's indulgence. May I
19 approach, your Honor?

20 THE COURT: Yes. Please approach freely.

21 MS. BERTSCHY: I know you gave me permission
22 earlier. I apologize.

23 THE COURT: It's okay.

24 BY MS. BERTSCHY:

1 Q. I'm going to hand you a document, okay, and it is
2 Exhibit 46. You recognize that document, right?

3 A. Yes.

4 Q. That's the report from Lindsey, right?

5 A. Yes. But it was -- yes, this first one is
6 Lindsay's handwriting.

7 Q. So it's Lindsay's handwriting?

8 A. No. No, it's not. That's my handwriting.

9 Q. Okay. But you don't remember writing that --

10 A. No. Sorry. I know that. Because I looked down
11 at her signature first and that's her handwriting, her
12 signature at the bottom. My thumb was there and that's where
13 I looked directly. I looked up, she writes in script, this
14 is my handwriting.

15 Q. You wrote that?

16 A. Yes. She told me her statement. We were sitting
17 at a table inside security at Harrah's across from each
18 other. She couldn't write. Her hand was shaking too much.

19 Q. So I'm going to stop you there. My question is
20 that you wrote that statement?

21 A. Yes.

22 MS. BERTSCHY: Your Honor, may I approach? I'm
23 going to keep saying it. I apologize.

24 THE COURT: It 's okay.

1 BY MS. BERTSCHY:

2 Q. Thank you. And you said that she told you what to
3 write?

4 A. Yes.

5 Q. And she was right there when you wrote it?

6 A. Yes. That was the most she had spoken that night.

7 Q. But she was right there?

8 A. Directly across from me.

9 Q. When you wrote it?

10 A. Yes.

11 Q. And you put the words that she used in?

12 A. Yes.

13 Q. Correct? And she had a chance to look at it,
14 right? You gave it to her to sign it?

15 A. Yes.

16 Q. And she told you to make some changes, right?

17 A. Not that I recall.

18 Q. So when it crossed off 5,6, 6-foot --

19 A. Yes.

20 Q. That's a change she told you to make?

21 A. Yes. Everything on there was her words.

22 MS. BERTSCHY: Thank you. I have no further
23 questions.

24 THE COURT: Redirect?

1 MR. LEE: No, thank you, your Honor.

2 THE COURT: May this witness be excused?

3 MR. LEE: Please.

4 THE COURT: Thank you for your time, ma'am. You
5 may step down. Your next witness, please.

6 MS. NORTINGTON: Your Honor, the State calls
7 Debbie Robison.

8 (One witness would sworn at this time.)

9 THE COURT: Once you're comfortably seated there,
10 pull the microphone in front of your face and give your
11 attention to Ms. Northington.

12 THE WITNESS: If I could get some water first?

13 THE COURT: Yes. You can pour a cup of water, you
14 bet.

15 DEBORAH ROBINSON

16 called as a witness and being duly sworn did testify as
17 follows:

18 DIRECT EXAMINATION

19 BY MS. NORTINGTON:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Could you please state and spell your name?

23 A. My name is Deborah Robison, R-o-b-i-s-o-n.

24 Q. And, Ms. Robison, what is your occupation?

1 A. I'm a sexual assault nurse examiner.

2 Q. And how long have you been a sexual assault nurse
3 examiner?

4 A. Well, I have been a sexual assault nurse examiner
5 since 1999. However, prior to that, I worked in the
6 emergency -- during that time and before that I worked in the
7 emergency department at various hospitals. And until sexual
8 assault nursing became its own discipline, we did exams in
9 the emergency room. And so even though I had been an
10 examiner for 20 -- almost 20 years, I have actually been
11 working with sexual assault patients for the 39 years I've
12 been nursing.

13 Q. Could you please just describe the education and
14 training you have that allows you to be a nurse?

15 A. So I went to work nursing school, graduated in
16 1980, passed the NCLEX, which is the state board of nursing
17 test. And then, again, I've been a nurse for 39 years,
18 maintained my certification, of course, with continuing
19 education.

20 Q. And what nursing degrees do you have?

21 A. I graduated with that a two-year degree and then
22 just a couple of years ago I graduated with my bachelors in
23 science in nursing.

24 Q. What credentials or certifications do you

1 currently hold?

2 A. So I am a certified sexual assault examiner,
3 adult, adolescent. I'm a sexual assault examiner pediatric.
4 I received certification as a forensic nurse examiner.

5 Q. And are these acronyms that SANE? Is that the
6 sexual assault nurse examiner?

7 A. Yes.

8 Q. What's SANE-A?

9 A. Adult, adolescent.

10 Q. What does SANE-P?

11 A. Pediatric.

12 Q. From when you graduated in 1980 up until 1999, you
13 worked in emergency rooms?

14 A. Yes, I did. In fact, I continued to work in
15 emergency rooms until 2006.

16 Q. And since 2006, what has your work been as a
17 nurse?

18 A. I worked in a surgery center until 2011. And
19 after 2011, I have been the medical coordinator for the
20 sexual assault program for Northern Nevada as well as doing
21 examinations.

22 Q. When were you certified as a SANE nurse?

23 A. The very first national certification was in 2002,
24 so I've been certified since 2002.

1 Q. So have you been certified since it became its own
2 discipline?

3 A. No. The sexual assault nursing became its own
4 discipline in the '90s. I believe 1992 the International
5 Association of Forensic Nurses was born and then 1995 I think
6 the American Nurse's Association recognized it as an entity
7 and 1997 something happened to make it even more of its own
8 thing.

9 Q. So you became certified in 2002?

10 A. 2002 was the first test, national certification
11 test that was offered.

12 Q. What is required to become a certified sexual
13 assault nurse examiner?

14 A. You have to take a class. At the time, they were
15 40-hour classes, in class classes, and so I went to a hotel
16 room for that. And then there was some work to do after
17 that. There was spending time with normal examinations,
18 spending time with law enforcement, spending time with
19 District Attorney's Office, spending time with advocacy and
20 being precepted by somebody who had been doing exams already.
21 And when they felt we were ready, we were on our own.

22 Even now, that continues, although there are
23 plenty of on-line classes now you can take to be a sexual
24 assault nurse examiner.

1 Q. In addition to the class you had to take, did you
2 take the test?

3 A. That was the national certification test in 2002.

4 Q. And is there requirements to recertify for the
5 same designation?

6 A. Yes. You have to recertify every three years. So
7 recertification is either retake the test or take 45 hours of
8 continuing education every three years. And that's specific
9 to sexual assault nursing. It can't be just any type of
10 nursing, it has to be specific to.

11 Q. Can you go into some of the trainings you've had
12 specific to sexual assault examinations?

13 A. Well, I try every couple of years to go to the
14 International Association of Sexual Assault Nurses Scientific
15 Conferences that are offered once a year, East Coast, West
16 Coast. Those are generally 2 or 3 days of lots and lots of
17 trainings and classes that we pick what we want to do and go
18 to those classes.

19 I go to the California Clinical Forensic Training
20 Center has trainings. I'll go to California and attend
21 trainings. Webinars are now a thing and so the International
22 Association of Forensic Nurses, the California Clinical
23 Forensic Training Center, entities like that, forensic -- I
24 can't remember the name of the forensic group that also does

1 classes. So multiple webinars are offered and I take
2 advantage of those as I'm able.

3 Q. Since 1999 when you became a SANE nurse, can you
4 estimate how many trainings you've done in sexual assault
5 nursing?

6 A. No.

7 Q. More than 20?

8 A. Oh, yes.

9 Q. 50?

10 A. I'm not sure. I know my CV is seven pages long.

11 Q. Have you testified previously in a case as an
12 expert in sexual assault examinations?

13 A. I've been qualified as an expert in the Second
14 Judicial District Court in Washoe County. I have testified
15 in the Third Judicial Court in the State of Nevada. I've
16 also testified in a couple of jurisdictions in California
17 also.

18 Q. And what is your relationship to Washoe County?

19 A. Washoe County independently contracts the nurses
20 that do sexual assault exams independently, so we're
21 independent contractors to the county. We do examinations
22 for all of Northern Nevada and then the 7 or 8 border
23 counties of California.

24 Q. And how many, as an estimation, how many sexual

1 assault examinations have you conducted?

2 A. I've conducted over 2,000 sexual assault exams
3 since 1999.

4 Q. And you said there's some you performed before
5 1999, before the designation?

6 A. So before it became its -- so in the emergency
7 room, nurses didn't do examinations on their own, it would be
8 the physician. We would do as much as we could as far as the
9 examine, evidence collection, specimen collection and that
10 kind of thing. When it got to the genital area, the doctor
11 had to come in and do that part of the examination.
12 Certainly, I would do all of what I could and then I would
13 assist the physician in that last piece.

14 Q. Since 1999, you have alone conducted approximately
15 2,000 of these examinations?

16 A. That's correct.

17 Q. What's the age range that you conduct the
18 examinations on?

19 A. From months to -- I think my oldest patient may
20 have been 91 years old.

21 Q. Men and women?

22 A. Correct.

23 Q. I'm going to move on from your qualifications at
24 this point. Is it fair to say that the female genitalia is

1 made up of several components?

2 A. Yes, it is.

3 Q. Can you give a brief over view of what makes up
4 the female genitalia?

5 A. So the female genitalia is a couple of different
6 kinds of mucosa. We have vaginal mucosa, we have skin on the
7 outside, and so mucosa, skin. And lay people call the entire
8 area the vagina. It's not. The vagina is what's on the
9 inside. But then there's the definition of what's external.
10 It's external to the vagina, but there's internal genitalia
11 and external inside the vagina, but we still have the labia
12 majora that lays over everything.

13 So what is classified as external genitalia is
14 internal to the labia majora. So it's a complex group of
15 tissues and, again, mucosa that makes up a female anatomy.

16 Q. And is this an area of the body that heals
17 relatively quickly?

18 A. Yes, it does. It's warm and moist and dark and
19 for that reason healing occurs rapidly.

20 Q. And you had indicated that the female genitalia is
21 complex. I believe that's what you just said.

22 A. Yes, ma'am.

23 Q. Does that indicate to you that it's something that
24 is better understood when seen in person?

1 A. Yes, it is.

2 Q. As opposed to photographs or video or anything
3 like that?

4 A. Yes, it is.

5 Q. In your experience, have there been sexual assault
6 examinations conducted where there's no injuries found?

7 A. Oh, for sure.

8 Q. And in your experience in cases of digital
9 penetration, if there are injuries, where in the genital area
10 are they generally found?

11 A. Certainly injuries can be found anywhere in any
12 kind of a sexual situation, whether it's consensual or
13 nonconsensual. There are studies out there that say there
14 are more injuries for this reason or there are more injuries
15 for that reason.

16 But, really, generally speaking, regardless of the
17 type of sexual activity, most injury occurs in the labia
18 minora and below the vaginal opening. So in the posterior
19 fourchet and the fossa navicularis. These are long words, I
20 realize. These are all structures that are below the vaginal
21 opening. From the research I've done, again, it doesn't
22 matter whether we have penile penetration or digital
23 penetration, the injuries tend to be in those same areas.

24 Q. So when you reference below the -- sorry -- below

1 the vagina, say we're looking at the clock, I believe the
2 terminology we're looking at the clock. Where at on this
3 clock of the female genitalia is what you're speaking of the
4 posterior fourchet?

5 A. We do find injury findings based on the face of a
6 clock. And this is so all of us can understand what we're
7 all talking about in the same manner. 12:00 being the
8 clitoral hood or towards the upwards side and 6:00 being
9 towards the anal area, 3:00 being to the left and 9:00 being
10 to the right as a face of a clock. So generally most
11 information or injuries is found between 3:00 and 9:00.

12 Q. In your experience, what types of injuries are
13 found with nonconsensual digital penetration?

14 A. So between 3:00 and 9:00, again, the fossa
15 navicularis, so the area below the vaginal area. So those
16 are the lips, inside the labia majora, which are the bigger
17 lips and some vaginal and some cervical injuries have been
18 found in digital penetration.

19 Q. And what are the nature of these injuries?

20 A. Abrasions, erythema, which is redness, and
21 lacerations, which is a tear that is created by blunt force
22 trauma.

23 Q. And what is an abrasion?

24 A. An abrasion is just a scraping of the skin. So

1 it's just a scraping of say the top layer or a couple of
2 layers of skin.

3 Q. Is it fair to say a scratch?

4 A. It could be a scratch, yes.

5 Q. And in your experience, what causes these
6 injuries?

7 A. Well, certainly something scraping the skin. On
8 our fingers, we have fingernails, fingertips, which can be
9 rough or smooth depending on a person and their makeup.

10 Linear abrasions, linear scratches can be caused
11 by like dry skin on somebody's finger or stuff, because this
12 mucosa is very soft and can potentially scrape easily or hang
13 nails or fingernails or rough skin, that kind of a thing.

14 Q. You had indicated that these injuries can be found
15 anywhere in the female genitalia. Are there any medical
16 studies involving nonconsensual digital penetration that says
17 these injuries should be at the 12:00 area?

18 A. No. I found nothing that documented any 12:00
19 position for finding injury. Although, certainly, in some of
20 our textbooks, they don't specify 12:00 as far as injury goes
21 or a common area of injury. Although in looking at photos,
22 there have, you know, there were photos of injuries in, say,
23 the clitoral hood, I think. But in the entire textbook, I
24 think there was only one. All the rest were down lower,

1 again, below the vaginal opening.

2 Q. And I'm sure there's all kinds of factors that
3 will affect where the injuries are located?

4 A. Yes, there are.

5 Q. Does that include if the victim is struggling
6 physically?

7 A. Sure. Yes. It can include how they were touched,
8 if they were struggling, whether there was movement, whether
9 the touching came from the front, it came from the back, it
10 came from the bottom, you know, there's just -- whether it
11 came around the side, whether there was clothing, you know,
12 that affected where the -- where somebody's hands may have
13 went. There's so many factors that indicate something or
14 where something may have happened on a genitalia.

15 Q. I'm going to switch gears. What is the purpose of
16 a sexual assault examination?

17 A. The purpose of a sexual assault examination is to,
18 first of all, make sure the patient is okay. We're going to
19 check them over. We're going to talk to them about what
20 happened, get consents to say it's okay for us to touch them
21 after they've had something like this happen. Get them in
22 contact with advocacy, start working on mental wellness.

23 And then to do a physical examination to document
24 any findings. Do they have bruises? Do they not have

1 bruises? Do they have any kind of medical conditions? Is
2 there something going on with their body that maybe had
3 nothing to do with the sexual assault. Do they have injury
4 from the sexual assault? Can we tell whether anything
5 happened from the sexual assault or was injury there prior,
6 because certainly patients come in with injuries that
7 happened from, you know, running into a desk as they were
8 walking by on the way to work, things like that.

9 Specimen collection, similar to going to the
10 hospital with a sore throat, we're going to swab their
11 throats. Specimen collection in a sexual assault, where were
12 you touched? We're going to use Q-Tips and we're going to
13 touch in those same areas.

14 Assessing for toxicology, do we need to collect
15 blood urine? Do you think you were drugged? Do we think
16 that's a potential? Should we collect blood? Should we
17 collect urine? Pregnancy testing, HIV testing, is there
18 exposure? Do we need to treat for that? STD testing or not
19 testing or prophylactic, instruction for medical or mental
20 health reasons.

21 And so it's a whole package of wellness and then
22 specimen collection and documentation for somebody who has
23 been through a traumatic experience.

24 Q. And specimen collection and documentation, is it

1 fair to say that's evidence collection?

2 A. Yes. It's specimen collection for evidence of
3 DNA.

4 Q. DNA of who?

5 A. Any contact with that person. So whoever touched
6 that person for their DNA. Although that specimen collection
7 may -- collects any DNA, not necessarily just the person that
8 touched them unconsensually or nonconsensually, but it could
9 be anybody's DNA.

10 Q. Do you also collect a reference sample from the
11 patient for their DNA?

12 A. Yes, we do. Guaranteed in the kit is going to be
13 one DNA profile. So we always need that control, that swab
14 says that -- that the DNA profiles found, that one of them
15 belongs to that person.

16 Q. And given your experience in digital penetration
17 cases, would you be surprised if there's no finding of DNA?

18 A. No, I would not.

19 Q. Why is that?

20 A. Well, just from the classes I've taken and so on.
21 For sometime, if there was digital penetration, nobody even
22 asked to have the patient seen. They didn't feel like an
23 examination was warranted, because there wasn't going to be
24 any DNA.

1 Dr. Green in California at the California Clinical
2 Forensic Medical Training Center did a little small study,
3 but a study of touch DNA. And, again, it's small, so it's
4 limited, but basically said, unless there's contact of more
5 than 30 seconds, that there's not going to be any DNA left
6 behind. Certainly, DNA is affected by what kind of contact
7 is there and sweat on fingers is better.

8 MR. FUSS: I'm going to object as to her
9 foundation to be testifying about touch DNA. It sounds like
10 she's relying simply on one article.

11 THE COURT: I'll allow you to voir dire. I
12 overrule the objection. That means you can ask the question
13 and you can answer, Ms. Robison. Go ahead.

14 MS. NORTHINGTON: Thank you, your Honor.
15 BY MS. NORTHINGTON:

16 Q. Does the nature of the female genitalia also
17 affect your understanding of DNA?

18 A. So yes. Because it's a very moist environment, we
19 have a ton of DNA down there of our own. That's where it
20 belongs. That's where it lives.

21 When we get a control DNA sample, we get it from
22 the buccal swab or the cheek area, which is again, mucosal,
23 wet. So that's a great place to get a person's DNA. The
24 genital area is the same kind of area or the same type of

1 tissue. So touch DNA may or may not deposit a large amount
2 of DNA, but we have a huge amount of DNA of our own down
3 there. So the potential there is for dilution.

4 But, again, with Dr. Green's study, he just said
5 touch DNA seems to need a fair amount of contact in order for
6 it to be found.

7 Q. Would urination affect that finding?

8 A. Yes, it could.

9 Q. And wiping after urination?

10 A. Yes, it could.

11 Q. Why is that?

12 A. Well, because the potential is there, urination is
13 you're washing that area with urine and then we're wiping
14 that area. So if there is DNA there, then there's a good
15 possibility that is all going to be wiped away.

16 Certainly, we can find DNA in the vagina up until
17 a person has a period and then with the flushing of the
18 menstrual cycle, then we're not going to get DNA anymore. So
19 there are many studies or several studies out there that have
20 proven that. So it's the same concept.

21 Q. I'm going to shift gears again. Here in Washoe
22 County, physically where are these examinations conducted?

23 A. We do the sexual assault examinations at the
24 Washoe County Child Advocacy Center.

1 Q. How does it work? Are you on-call?

2 A. Yes, the on-call program.

3 Q. When you get a call to conduct an examination, do
4 you meet the patient at the child advocacy center?

5 A. Yes.

6 Q. What happens when the patient walks through the
7 door? Can you walk me through that?

8 A. When the patient comes to the child advocacy
9 center, sometimes I'm there and sometimes the nurses. It
10 depends on timing. But the patient meets with the nurse and
11 the advocate in the lobby. We go back to the examination
12 room.

13 Q. Once you're back in the examination room, what do
14 you do next?

15 A. So we talk about the patient, about application
16 for funding secondary to sexual assault. We talk about
17 consent, get consent for it to be treated. We talk to them
18 about the history of what happened to them. We have a
19 questionnaire type form the forensic lab provides in the kit
20 that we go through that is a checklist and fill in the blank
21 type form that we talk about medical history, contact, where
22 they were contacted on their body, how they were touched. We
23 talk about what they did after the assault. Did they bathe?
24 Did they go to the bathroom? Did they brush their teeth?

1 There's a whole list of things that we do.

2 And then when we're finished with that
3 questionnaire, then I will -- the nurses will tell them what
4 we're going to be doing for them as far as what the
5 examination looks like and then talk to them about after the
6 examination whether we're going to offer medication or not.
7 And, of course, let them know that any part of the
8 examination they can refuse. They do not have to comply with
9 everything.

10 Photography or video is a part of our examination.
11 It can be very difficult for somebody to have video taken of
12 their genital area and so discussion about that and consent
13 for that.

14 And then from there the nurse will then start
15 doing the examination. The advocate is there and then kind
16 of doing paper work and advocacy in tandem.

17 Q. Are there different types of examinations you'll
18 do depending on what the report is?

19 A. Yes. The examination really is based on what
20 happened to the patient.

21 Q. Are there the different types like a genital
22 examination, is that one of the areas specifically that you
23 will examine?

24 A. Well, if the patient -- in this case, yes, but I

1 mean if the patient says they were only assaulted in their
2 mouth, well, then I'm not going to do a genital examination,
3 because I'm just going to examine them in their mouth. But
4 of course make sure their whole body is okay.

5 Q. You get what happened so you know how to proceed
6 from there?

7 A. That's correct.

8 Q. In cases of genital examinations, you talked about
9 a video. Can you describe how this video is taken?

10 A. Oh, we have a colposcope in the room, which is a
11 very large machine. It is a binocular vision machine that
12 magnifies everything really big and it's connected to a DVD
13 player and a monitor.

14 So at the time when we were doing -- when we were
15 using the colposcope, we're not using it as much anymore,
16 we're using the digital photograph now, at the time we did
17 this examination it was exclusively the colposcope. We would
18 videotape the entire examination of the genital area. We
19 would turn it on when the patient was positioned and the
20 video would be of the entire genital examination.

21 Q. Can you say where the big machine is?

22 A. So the patient is on a regular patient gurney and
23 the machine, all the machinery sits to the side of the
24 patient, pretty similar to this monitor next to me except

1 it's turned so the patient can't see it. The machine is on a
2 big -- is a roller. It's very heavy. But it's got an arm,
3 articulating arm. And then the binoculars come down in front
4 of me and then I look through the binoculars in front of me
5 and shines a really bright light in the genital area.

6 And then it's -- so it's just stationed there
7 between the patient's legs and I'm constantly looking between
8 the colposcope and the binoculars to the monitor to make sure
9 everything is in focus on the monitor and back and forth and
10 doing the examination at the same time.

11 Q. It's quite the contraption this colposcope?

12 A. It does not travel. It's huge and it's very
13 heavy.

14 Q. Do you manipulate it?

15 A. I have to manipulate, because I have to make sure
16 whatever I see on the monitor is focused, because that is
17 going to be what I review later and so it needs to be clear.
18 And what I see through the binoculars is not necessarily what
19 I'm see on the monitor. I'm touching the patient and I'm
20 back and forth looking and looking through the binoculars
21 where everything is very magnified.

22 Q. When you're doing a genital exam with this
23 colposcope, what's your first step once you get down there?

24 A. A patient is in lithotomy position, laying on

1 their back with their feet in stirrups. And I start
2 videotaping and I will videotape just top to bottom, again,
3 magnified. So basically that really small area of genitalia
4 does not fit on one screen, so I'm moving the camera up and
5 down to make sure I get everything.

6 I will then swab on the outside of the genitalia,
7 again, if this is appropriate to what happened to them. I
8 will swab on the outside, which is the mons and the labia
9 minora. And so -- sorry -- labia majora. So swab on the
10 outside and kind of go from the top down to the bottom. So I
11 can't see DNA, I can't see if there's anything there. And so
12 it's just a general all over swab.

13 And then set that aside and then I just start
14 working from the top, so separate the labia. I look at those
15 areas. I look at the -- between the labia minora and labia
16 majora, the clitoral hood. I move the camera down. I'm
17 looking at all the labia minora, the posterior fourchet,
18 which is the tip of skin that connects the labia minora,
19 which -- and below the hymen and the vaginal opening. I'm
20 looking at the hymen, I'm looking at all of those tissues.
21 And so all of that I need to make sure I capture it, and you
22 know, so I'm touching all of these areas. And then that is a
23 general examination.

24 Toluidine blue dye, I'll do that next. I'll do a

1 speculum examination, collect swabs from inside. In this
2 case, I did not do a speculum examination. I went from
3 looking at the outside to looking at the inside to collecting
4 the swabs from there.

5 Q. So this examination that you're talking about is
6 just a physical hands-on visual inspection?

7 A. Yes, it is. Hands-on visual and touching. I
8 mean, we have to separate everything and look at everything.

9 Q. So your hands on are on the patient?

10 A. Yes, they are.

11 Q. If you see something of note, is that when you use
12 the dye or do you always use the dye?

13 A. The only time I don't use the dye is if the
14 patient has so much injury that it's obvious. The days after
15 the incident can be a little burnie and if somebody has very
16 bad tearing or that kind of thing, I don't want to put dye on
17 it. I don't need to. It's very obvious. But routinely I
18 use it on every patient, again, except for those cases.

19 Q. What does the dye do?

20 A. So toluidine blue dye is a chemical reaction with
21 broken cells. So it pick ups -- the nucleus of the cell
22 picks up this dye and you only get the nucleus if the cell is
23 broken. So we will wipe it on the tissue, let it set for a
24 second, and then we will dab it off or wipe it off with

1 either a one percent vinegar solution. Again, if can imagine
2 if there's injury if we're placing a vinegar solution on
3 there, it's not going to be okay. That's another reason why
4 I might with an injury that I am not going to do this. We
5 can always still use a lubricant, a water based lubricant to
6 take it off. Either way is fine.

7 But we'll put the dye on and then we'll use the
8 gauze with either the vinegar solution or, I'm sorry,
9 lubricant to take it off. Then we should be able to see
10 injury initially and then we should be able to see it better
11 with the dye. But it should support findings that we've
12 already seen.

13 Q. So, in general, did the dye confirm the findings
14 you've already seen?

15 A. Yes, it did.

16 Q. And you mentioned dabbing or wiping off the dye.
17 Is that the commonly used practice when using this toluidine
18 dye?

19 A. Yes.

20 Q. What's the difference between dabbing it and
21 wiping it and why do you use it certain times?

22 A. Certainly we don't want to get very aggressive
23 about cleaning. We just want to take it off. But lubricant,
24 you can't dab a lubricant. You need to wipe it on and wipe

1 it off. With a liquid, you can spray it on or use the gauze,
2 wet gauze to dab it and then just take off the dye that is
3 not adhering to just normal healthy tissue.

4 Q. So this dye is a liquid? It's not like a gel?

5 A. It is a liquid, that's correct.

6 Q. And I'm going to backup a little bit. When the
7 patient and the nurse first enter the examination room, is
8 the patient still clothed?

9 A. Yes, they are.

10 Q. What is the process if they're still wearing the
11 same clothes as the assault to remove that evidence?

12 A. So after we do our history and we get through all
13 the paper work and I explain to the patient what we're going
14 to be doing for them, then I will do what I can at the table.

15 So, say, I'll go ahead and wash my hands and go to
16 my kit and get my swabs and my box and I'll go to the patient
17 and I'll swab the inside of their cheeks and get their DNA.

18 If I were to collect fingernail swabs, I might do
19 that at the table. The examination is difficult and so I
20 like to do as much as I can for the patient before we even
21 head to the bathroom and start getting undressed. So I will
22 do as much as I can at the table and then the patient and I
23 will go back into the bathroom and I will go ahead and get
24 them undressed.

1 We'll put a sheet on the floor, have them undress
2 over the sheet, bag the clothes. At the same time, I keep
3 them covered with a patient gown, cover them up, clothes off,
4 take a look at their body while we're doing it. Just kind of
5 discreetly, we don't want somebody standing naked, but have
6 them remove their clothing and bag it at that time. And then
7 I'll make sure they're gowned and gowns are tied and so on.
8 And if we need them to pee in the cup and give me a urine
9 sample, if not, we go to the examination table from there.

10 Q. And we discussed this colposcope video. Are there
11 instances where you'll take still shots of this video for
12 your report?

13 A. So, yes, when we are doing video, then we always
14 take the pictures that we -- that would show what we wanted,
15 you know, what was pertinent, basically. We would take the
16 pictures of that video and then we mount those with an
17 explanation.

18 Q. And this is your way of documenting injuries that
19 are found?

20 A. Yes, it is.

21 Q. How long do these sexual assault examinations
22 generally take?

23 A. It just depends on how much we do, how we talk,
24 how much the patient needs from us. So they can take

1 anywhere from, again, depending on how much we do, from
2 45 minutes to 2 hours.

3 The examination itself doesn't take that long.
4 It's more all of the other stuff that we do with them, the
5 talking about what happened and then, you know, afterwards
6 talking about follow-up and medication and things like that
7 and the advocacy and the paper work for Victims of Crime and
8 all of the things that go along with it. So the examination
9 itself can actually be very short, especially if it's a
10 limited examination, like I don't have to do a whole lot.

11 Q. Is this examination invasive?

12 A. Yes, it is.

13 Q. And can it be traumatic for the patient?

14 A. Yes, it is.

15 Q. It is often traumatic for the patient?

16 A. Yes, it is.

17 Q. I want to talk specifically about the exam in this
18 case on Lindsey and the exam was on 5:25 a.m.. Do you recall
19 that examination?

20 A. Yes, I do.

21 Q. Did Lindsey meet you at the CAC?

22 A. Yes.

23 Q. The child advocacy center. I apologize. Do you
24 remember what her appearance was like?

1 A. So she had pretty red eyes and she was just a
2 little disheveled. But her clothing was intact. It wasn't
3 torn or anything like that.

4 Q. Is it your understanding she was still wearing the
5 same clothing?

6 A. Yes, it was.

7 Q. Did you go through the process of disrobing her as
8 you discussed?

9 A. Yes, I did.

10 Q. Do you remember specifically if you collected any
11 clothing?

12 A. I collected her dress and her tights.

13 Q. Was she able to describe the assault to you?

14 A. Yes, she was.

15 Q. And what exam did you perform on Lindsey?

16 A. So the way she described what had happened to her,
17 her examination didn't need to be -- like I didn't need to do
18 a full body, look for bruising, look for hickeys, things like
19 that. She described it as being a brief encounter. So my
20 examination for her was very focused.

21 I swabbed her cheeks as I do for everyone. She
22 wasn't sure if she scratched the person, so I swabbed her
23 fingernails. I collected her clothes. And then I did a
24 genital examination. And that was really the extent of the

1 examination itself. So a very, very quick examination.

2 Q. And was the cheek swab to get her DNA?

3 A. Yes, it was.

4 Q. For a reference sample? For her genital exam, did
5 you use the colposcope as you described?

6 A. Yes, I did.

7 Q. This is the method you had in place in December of
8 2016?

9 A. Yes, it was.

10 Q. And based on your visual inspection of her
11 genitalia, did you note injuries?

12 A. Yes, I did.

13 Q. Did you then use this toluidine dye on her?

14 A. Yes.

15 Q. Did this dye confirm your own findings?

16 A. Yes, it did.

17 Q. Is there a diagram that is part of your standard
18 forms that you use when you're doing these examinations?

19 A. Yes, there is.

20 MS. NORTHINGTON: Your Honor, may I approach the
21 clerk?

22 THE COURT: Yes. Please approach freely.

23 BY MS. NORTHINGTON:

24 Q. Ms. Robison, I'm showing you what has been marked

1 as Exhibit 7. Please review this.

2 A. Yes.

3 Q. Do you recognize what's depicted in this exhibit?

4 A. Yes, I do.

5 Q. Is this the diagram you usually use in your sexual
6 assault examination?

7 A. Yes, it is.

8 Q. Do you recognize this from a specific examination?

9 A. Yes, I do.

10 Q. Which examination?

11 A. This is Lindsay's examination.

12 MS. NORTHINGTON: Your Honor, State moves to admit
13 Exhibit 7.

14 THE COURT: Any objection?

15 MR. FUSS: No, your Honor.

16 THE COURT: Seven is admitted.

17 BY MS. NORTHINGTON:

18 Q. Ms. Robison, can you describe what is indicated on
19 the top right of this diagram?

20 THE COURT: Perhaps you could circle it or draw an
21 indicator.

22 BY MS. NORTHINGTON:

23 Q. Can you describe what is indicated in this portion
24 of the diagram?

1 A. So that is actually the inside of the vagina or a
2 flat depiction as best can be from a 3D item. But that is a
3 cervix at the back. The round thing with the little whole in
4 the middle is a picture of a cervix. And that is looking at
5 the vagina and the cervix through a speculum.

6 Q. And this is part of the female genitalia that is
7 inside the body?

8 A. Yes.

9 Q. As you can see, this was not assessed with
10 Lindsey?

11 A. That is correct.

12 Q. Can you please describe what's indicated in this
13 portion of the diagram?

14 A. So as I was talking about earlier, the female
15 genitalia, 12:00, 12:00.

16 Q. You can mark on the diagram.

17 A. I'm trying. There we go. 12:00 at the top, 6:00,
18 3:00 and 9:00. And so in her case, she had toluidine blue
19 dye uptake to the sides of her clitoral hood. So this is the
20 clitoral hood here. This is the hole where we pee from here.
21 This is the vagina right here. This outer circle right here
22 is the -- where's the erase?

23 Q. On the bottom.

24 A. Thank you. The hole where we pee from, the

1 vagina, the hymen is around here, and then what I was talking
2 about earlier with the -- so this is the labia minora here,
3 the labia majora outside and this is, of course, with all of
4 the tissues retracted open. And the fossa navicularis is
5 below the vaginal opening and then this posterior fourchet is
6 this thin piece of skin that connects the labia majora. What
7 I have documented is some toluidine blue dye pickup up here
8 and toluidine blue dye uptake down here.

9 Q. And this is the update we were discussing that
10 confirmed your findings from your visual examination?

11 A. So the toluidine blue dye uptake at the bottom
12 down here, I could see that abrasion when I did my
13 examination initially. I did not see anything of concern up
14 in this area, but when I put the toluidine blue dye on and I
15 cleaned it off there was still uptake so I need to address
16 it. And so I documented it was there. But I didn't see
17 anything there prior to applying the toluidine blue dye.

18 Toluidine blue dye only uptakes to injured tissue.
19 It doesn't say how it was injured. So not only injury from
20 contact, but certainly irritation or say somebody had an STD
21 or anything that irritates the skin can uptake toluidine blue
22 dye. So I'm just documenting that it's there. But certainly
23 down here, this I saw before I put the dye on and so it
24 supported my findings there.

1 Q. And to clarify something you said earlier, you
2 said that the injuries in the female genitalia are generally
3 found between 3:00 and 9:00. Could you indicate on this
4 diagram where that's at just to be clear?

5 A. So 3:00 to 9:00, so generally speaking this area
6 here.

7 Q. Towards the bottom?

8 A. Below -- so generally in this area right here.

9 Q. Okay. Thank you. I'm now showing you what has
10 been marked as Exhibit 6, which is two pages. Can you take a
11 moment to review both pages? Do you recognize what's
12 depicted in the two pages of exhibit -- I apologize -- I
13 forgot -- 6?

14 A. Yes, I do.

15 Q. What is depicted in these two pages?

16 A. Those are photos I took from the DVD of the
17 examination I did on Lindsey.

18 Q. Were these two items a part of your report?

19 A. Yes, they were.

20 MS. NORTHINGTON: Your Honor, the State moves to
21 admit Exhibit 6.

22 MR. FUSS: No objection.

23 THE COURT: Six is admitted.

24 BY MS. NORTHINGTON:

1 Q. These photos are taken from the genitalia of
2 Lindsey, correct?

3 A. That's correct.

4 Q. With the colposcope?

5 A. Yes, ma'am.

6 Q. Now, this top photo, was this before or after you
7 applied the dye?

8 A. This is before I applied the dye.

9 Q. And what part of the genitalia does this depict?

10 A. So this is the clitoral hood here and then this is
11 the labia minora here and then this is the labia majora
12 retracted back.

13 Q. Is this 12:00 on the face of the clock?

14 A. Yes, it is.

15 Q. And the second photo on this page is after the
16 blue dye was applied?

17 A. Yes, it is.

18 Q. And what do you see with the blue dye?

19 A. So I actually neglected to document in my
20 documentation that -- so here is the dye that I'm looking at
21 as pickup. The sulcus -- so mild toluidine blue dye uptake
22 to the sulcus parallel to the clitoral hood. A sulcus is a
23 crease between two items. This is a crease between the labia
24 minora, the labia majora and the clitoral hood.

1 So these pictures are a little washed out because
2 they're so bright on the monitor, as well as being a
3 reproduction of any original photos. But you can see the
4 purple here and a little bit mild purple there. There is
5 toluidine blue dye pickup here. This person, Lindsey, had
6 shaved and this was her, you know, kind of her follicles from
7 shaving. And so for me, the toluidine blue dye pickup was
8 not significant there, but I didn't document that.

9 But it is there, I acknowledge that it is there.
10 But it's -- it should be there, basically, because of
11 shaving. But this is what I was noting that I didn't see any
12 injury, but I did see some toluidine blue dye pickup there.

13 Q. So the hair follicles were not a part of your
14 finding?

15 A. No. I didn't document anything on that.

16 Q. Because that's not necessarily an injury?

17 A. That's correct. It is from shaving or it's
18 irritation, what I felt was skin irritation from shaving.

19 Q. On page two, is this before you applied the dye?

20 A. Yes, it is.

21 Q. Thank you. And before you applied the dye, did
22 you note any findings?

23 A. So here is the abrasion that I was documenting,
24 and it really is darker in real life, but this redness right

1 here was what I was looking at in my examination.

2 Q. And this is in the 5:00 to 6:00 area?

3 A. Yes, that's correct. So this is the labia minora
4 here. This is the hymen. She has a very thin hymen right
5 here. And this is actually vaginal tissue right here.

6 Q. So is that, I apologize if I use the wrong
7 terminology, but is that the vaginal canal, the tube that
8 enters into her body?

9 A. That's the wall of it, that's correct.

10 Q. You can see into her vagina from this position?

11 A. Well, you can see vaginal tissue that is in the
12 opening. You can't see the tube, but you can see the vaginal
13 tissue in the opening.

14 Q. So this is the injury you noted before you applied
15 the dye?

16 A. That's correct.

17 Q. And did the dye confirm your findings?

18 A. Yes, it did.

19 Q. Is this the photograph after the dye?

20 A. Yes, it is.

21 Q. Could you explain what's depicted in this
22 photograph?

23 A. So here you can see that the dye, that it's darker
24 now than it was before, and so this supports that is injured

1 tissue. So the dye picked that up.

2 Now, you can also see dye here. Hymens are a
3 different kind of tissue than, say, the labia minora and
4 inside here. And so hymens actually uptake toluidine blue
5 dye regardless. So on dye on a hymen, it means really
6 nothing. So this edge of blue here, yes, it's there, but
7 it's actually on the edge of the hymen. I tried to be
8 careful about not putting it there. That's just an uptake on
9 the hymen, but it is not significant for anything.

10 But this, you know, we just look for dye to show
11 us the same thing that we've already seen in, you know, in
12 the examination before we put the dye on.

13 Q. And this injury that you found in the 5:00, 6:00
14 region, that's consistent with your understanding of where
15 injuries that are normally found in the female genitalia?

16 A. That's correct, it is a common area.

17 Q. This area that this injury is found in the labia
18 minora, fossa navicularis, is that inside her vaginal
19 opening?

20 A. It's part of the external genitalia. It's inside
21 the labia majora and it's inside the labia minora, but it's
22 outside the vagina.

23 Q. This area here, you can see is kind of risen from
24 the rest of the area, that's the hymen you were discussing?

1 A. So, no. This is the hymen right like this. This
2 is vaginal tissue. And when I swabbed this area, this is the
3 opening right down here that I swabbed into her -- I swabbed
4 all of this with the Q-Tip, but I also went inside the vagina
5 down in here and swabbed more inside.

6 Q. So when you say opening, you mean the opening into
7 the vagina?

8 A. That's correct.

9 Q. And this injury that you documented is right on
10 the edge of the hymen, right near it?

11 A. It's just below it.

12 Q. Just below it?

13 A. And see here's -- this is all her hymen right here
14 and it's kind of laying outwards, it's laying out, so it's
15 actually against the labia minora here. So, you know, if I
16 could take a Q-Tip, I could have gently push it, I would have
17 pushed it towards the vagina, but it's laying open.

18 Q. Thank you. Did your examinations of Lindsey
19 include the use of a speculum?

20 A. No, I did not.

21 Q. And why not?

22 A. Based on what Lindsey told me, standing up
23 position with him reaching down into her genital area and the
24 fact that her vaginal tissue is so right at the surface, I

1 felt that the speculum examination -- first of all, I would
2 have had to swab first, which I did. I would have taken a
3 speculum, looked inside really quick just to see if there was
4 anything in there as far as injury goes.

5 Based on a standing position, mechanically
6 speaking, how far can a person get down into the genitalia
7 and into the vagina. I wasn't worried about her cervix and
8 finding injuries on her cervix. That's at the very back of
9 the vagina, depending on the person, 3 to 5 inches. I had
10 vaginal tissue. I could see the vagina itself. I didn't
11 feel in her case it would be beneficial to her to put a
12 speculum in her vagina to see if there was any injury further
13 up.

14 I didn't see any injury on the vaginal tissue that
15 I could see. I did put a Q-Tip in there and kind of moved
16 the tissue around as I was collecting my specimen to look in
17 the area. I felt in order to spare her some distress, that I
18 opted not to put a speculum inside.

19 MS. NORTHINGTON: Court's indulgence, your Honor.

20 THE COURT: Sure.

21 BY MS. NORTHINGTON:

22 Q. Ms. Robison, I'll show you page 2 of Exhibit 6.
23 This is where you noted the 5:00, 6:00 region, correct?

24 A. That's correct.

1 Q. Is this injury inside the genital opening?

2 A. Yes, it is. It is inside the labia majora and the
3 labia minora is the external genitalia.

4 Q. To be clear, this still shot is of you pulling it
5 apart, correct?

6 A. That's correct. I have all of her structures open
7 here. If you were to see the -- if I had posted a photo of
8 her before I even touched her, you could not see any of this.

9 Q. So you couldn't see this injury if you weren't
10 pulling it apart to clarify?

11 A. That's correct.

12 Q. Is this abrasion here consistent with a victim
13 that says she feels pain while urinating?

14 A. Yes, because urine burns in -- if your tissue is
15 irritated or so on, urine burns. And so this could easily be
16 something that would burn a little bit if she got some urine
17 on it.

18 Q. And it's your understanding that such an abrasion
19 would heal within a few days given the nature of the female
20 genitalia?

21 A. Oh, yes.

22 Q. Given your experience, were your findings on
23 Lindsey consistent with her account of what happened?

24 A. Yes, they were.

1 MS. NORTHINGTON: Thank you. No further
2 questions, your Honor.

3 THE COURT: Cross examination.

4 MR. FUSS: Yes, your Honor.

5 CROSS EXAMINATION

6 BY MR. FUSS:

7 Q. Would you prefer I address you as Nurse Robison,
8 Ms. Robison?

9 A. Oh, I'm sorry. It doesn't matter to me. Thank
10 you for asking.

11 Q. You're welcome.

12 A. Never been asked that question before.

13 Q. It's a Mid Western thing, I think. Let me go back
14 to the last picture that you were talking about with the
15 State regarding the findings of a linear abrasion to the
16 labia minora, facet -- would you pronounce it, please?

17 A. Navicularis.

18 Q. 5:00 p.m. to 6:00 p.m. highlighted with toluidine
19 blue, right?

20 A. Yes.

21 Q. I'm not sure, is that upside down or right side
22 up?

23 A. That's upside down.

24 Q. Ms. Bertschy, would you help me?

1 MS. BERTSCHY: Absolutely.

2 BY MR. FUSS:

3 Q. So if you would, set it back out where you had it,
4 Ms. Bertschy, and start with the top part of the photo and
5 just leave that part. Thank you. So with the naked eye,
6 your testimony today is this area here, here is the injury
7 you're describing? Is that the area? In fact, it kind of is
8 right in there?

9 A. That's correct.

10 Q. And you believe that to be indication of an
11 injury, right?

12 A. I do.

13 Q. Okay. And you at that point, you have the labia
14 majora pulled back?

15 A. Yes, I do.

16 Q. And the labia minora pulled back, correct?

17 A. Yes.

18 Q. Those are two natural folds found in female
19 genitalia used to naturally protect that area, correct?

20 A. That's correct.

21 Q. So there's two layers of what I would believe is
22 commonly called, lay terms, it would be lips?

23 A. That's correct.

24 Q. That cover that area, correct?

1 A. Yes, sir.

2 Q. And did you take a still before?

3 A. No. The stills --

4 Q. You indicated you wish you had, but did you take a
5 still of it without you pulling it apart?

6 A. No. That's all part of the video.

7 Q. What about -- it's not part of the video?

8 A. That is a part of the video.

9 Q. It's on the video?

10 A. Yes, sir.

11 Q. And you described earlier when we were talking
12 about the two dimensional diagram that you had regarding the
13 pelvic examination, which is in your report, correct?

14 MR. FUSS: Court's indulgence. Thank you.
15 Exhibit 7. May I approach?

16 THE COURT: Yes. Please approach freely.

17 MR. FUSS: Would you prefer I stop asking?

18 THE COURT: I appreciate that all counsel, ladies
19 and gentlemen, have shown the courtesy of how they move
20 around the well of the Court. They recognize that they may
21 move around the well of the Court really with my permission
22 as a matter of formality.

23 In each case, I've invited them after they ask for
24 the ability to move forward to move forward freely. They're

1 just being extra cautious when they ask again, and it doesn't
2 irritate me at all, but once you ask, I'm happy to grant
3 permission. Please go ahead.

4 MR. FUSS: Thank you.

5 BY MR. FUSS:

6 Q. That's the diagram you worked with when you
7 examined Lindsey, correct?

8 A. That's correct.

9 MR. FUSS: May I approach?

10 THE COURT: Yes.

11 BY MR. FUSS:

12 Q. This is in black and white, is that correct?

13 A. That's correct.

14 Q. When you noted the injuries, did you use any sort
15 of highlighter or color marker to indicate those injuries?

16 A. No, I did not.

17 Q. You didn't use the color green?

18 A. No, sir.

19 MR. FUSS: Might I have this -- it's essentially
20 the same exhibit as the exhibit that the witness has now, but
21 defendant's next in order.

22 THE COURT: Yes.

23 THE CLERK: Exhibit 48 marked for identification.

24 BY MR. FUSS:

1 Q. Would it be fair to say that your original copy is
2 copies in color of your whole report, it copies color?

3 A. I'm not sure what are you're asking me. I'm
4 sorry.

5 Q. You did a report in this case, right?

6 A. Yes, I did.

7 Q. And that report consists of the words step one?

8 A. Yes, sir.

9 Q. And also has a Northern Nevada SART team sort of
10 headline and a brief description of what your findings were
11 as a summary?

12 A. Yes, sir.

13 Q. It has your signature?

14 A. Yes, sir.

15 Q. The date in which you signed it?

16 A. Yes, sir.

17 Q. Consistent with the evaluation you did on that
18 day?

19 A. Yes, sir.

20 Q. And then you have what is called a collaborating
21 physician's signature, is that correct?

22 A. Yes, sir.

23 Q. Then we go to step two A?

24 A. Yes, sir.

1 Q. And on that page, there's a series of questions
2 that you have already testified to?

3 A. Yes, sir.

4 Q. Where you ask what I would call history questions?

5 A. Yes, sir.

6 Q. Tell the jury what a history question is, briefly.

7 A. So we just ask her a medical history -- well, a
8 history of the assault, a medical history and, again, a
9 history of where they were touched in a checklist and fill in
10 the blank format.

11 Q. And then that's actually a two page section that
12 goes from step two, there's two B, there's two pages?

13 A. Yes, sir.

14 Q. And then what we have what you call on step seven
15 A, there's anatomical drawings?

16 A. Yes, sir.

17 Q. It shows the right profile of a female silhouette?

18 A. Yes, sir.

19 Q. A face in silhouette?

20 A. Yes, sir.

21 Q. A back silhouette?

22 A. Yes, sir.

23 Q. And then a right silhouette?

24 THE COURT: Mr. Fuss, I'm sorry for interrupting.

1 You're reading from an unadmitted document. Is it your
2 intention to admit this report in its entirety?

3 MR. FUSS: I'm trying to lay the foundation if
4 that is in fact her report and it's a true and accurate
5 report. Would you like me to have it marked?

6 THE COURT: Yes.

7 MR. FUSS: Sorry.

8 THE COURT: Perhaps if you hand it to her, she can
9 authenticate it and we can move directly to admission if
10 that's your intention.

11 MR. FUSS: Thank you, your Honor. Can I have it
12 marked as defendant's next in line?

13 THE CLERK: Exhibit 49 marked for identification.

14 MR. FUSS: Thank you.

15 BY MR. FUSS:

16 Q. I'm going to approach again with what I believe to
17 be your full report.

18 A. Yes, sir.

19 Q. Is that your full report?

20 A. Yes, sir.

21 Q. Let me go back where I left off. You had talked
22 about the -- we had talked about the silhouettes. And I may
23 have gotten them backwards. The same way I think you got
24 your clock numbers backwards. The first time I think you

1 said 3:00 to the left and 9:00 to the right, which I think is
2 the opposite if we're looking at it.

3 THE COURT: The jury will have their recollection
4 of what her testimony was. Go ahead.

5 MR. FUSS: All right.

6 BY MR. FUSS:

7 Q. Is this the full report -- your full report?

8 A. Absent the application -- so what you have handed
9 me is absent the application for funding. And then it has --
10 yes, it's my full report and then it's actually got two page
11 twos on the photo piece.

12 Q. Two A, two B?

13 A. No. The page two, photo page one and then you
14 have two page, page two, photo page two on here. But, I
15 mean, if you're asking me if this --

16 Q. Accurate?

17 A. -- accurate, that's the inaccuracies in it.

18 Q. Thank you.

19 A. Otherwise, yes, it's my report.

20 Q. Looking at the page on -- strike that. So your
21 full report that is copied there, that's in color, is that
22 right?

23 A. This is in color, yes.

24 Q. It's in color because if you didn't print it in

1 color, you would not have color photos, correct?

2 A. That's correct.

3 Q. Okay. And on the first step one, is there a green
4 marker listed there or depicted there? I apologize.

5 A. I don't see green. There's blue and purple lines.

6 THE COURT: Before we talk about the contents,
7 would you like to admit it?

8 MR. FUSS: No.

9 THE COURT: Well, then don't talk about the
10 contents of an unadmitted exhibit.

11 MR. FUSS: I'm cross examining. She testified
12 that she did not use green in her report.

13 THE COURT: Okay.

14 MR. FUSS: I want to impeach her regarding that
15 information.

16 THE COURT: You may not use an unadmitted exhibit,
17 the contents thereof. If you want to admit it, great. If
18 you want to refresh her recollection with it, it doesn't have
19 to be admitted. But you're asking her to testify about the
20 contents. Please don't do that if and until it's admitted.

21 MR. FUSS: All right.

22 BY MR. FUSS:

23 Q. Let's go back to the drawing exhibit. You had the
24 single one with the color marked one?

1 A. So there's yours and then that's the one
2 Ms. Northington handed me.

3 MR. FUSS: Your Honor, I will move to admit it.

4 THE COURT: What's the exhibit number?

5 MR. FUSS: Strike that, your Honor. I need -- may
6 we approach briefly? I apologize.

7 THE COURT: Okay.

8 (Discussion at the bench.)

9 MR. FUSS: I apologize. My information regarding
10 the information that should not be admitted in the report, I
11 do not want that to go to the jury. Clearly, I don't want to
12 violate anything.

13 THE COURT: I appreciate the sensitivity to the
14 fact that there may be identifying information. Perhaps we
15 can reach an agreement to redact that or -- I think you're
16 talking about some --

17 MR. FUSS: Yes.

18 THE COURT: You might be asking, without admitting
19 it, do you recall? If you don't recall, would this fresh
20 your recollection? Yes.

21 MR. FUSS: Thank you.

22 THE COURT: Any other record you want to make?

23 MR. FUSS: Can you ask the witness, I have the
24 single exhibit.

1 (End of Discussion at the bench.)

2 THE COURT: Ms. Robison, would you hand me any
3 exhibits you have, please? The single page you had in your
4 hand. It would appear we do not need to be in conference.

5 BY MR. FUSS:

6 Q. So I handed you what was marked as Exhibit 48,
7 correct? I need to hand it back to you. I took it from you.

8 A. Thank you.

9 Q. Reviewing that, do you see green lines to the
10 right on the right hand right below where it says, pelvic
11 examination, not examined, green lines?

12 A. I do not.

13 MR. FUSS: Move to admit Exhibit 48.

14 THE COURT: I believe 48 has been admitted.

15 MR. FUSS: Okay.

16 MR. LEE: Judge --

17 THE COURT: I'm sorry. 48 has been offered, that
18 is a single page. Your response.

19 MR. LEE: Can we see it?

20 THE COURT: Sure.

21 MR. LEE: Can we ask your indulgence to discuss it
22 with counsel briefly?

23 THE COURT: Take a moment, counsel.

24 BY MR. FUSS:

1 Q. So the green on here is not from you, correct?

2 THE COURT: Well, you asked if she saw green on it
3 and she said no. Perhaps you could point her to an artifact
4 on the copy you're referring to that is of concern to you.

5 THE WITNESS: Oh, no, I did not put that there.

6 BY MR. FUSS:

7 Q. But do you see green now?

8 A. I do see green now, sir. Thank you.

9 Q. Thank you.

10 MS. NORTHINGTON: Your Honor, I'm not sure if he's
11 still moving to admit the exhibit or not. We have not
12 responded to that request.

13 MR. FUSS: I withdraw my request to admit.

14 THE COURT: It sounds like an explanation has been
15 garnered through the exchange of information outside the
16 admission of the exhibit. 48 is withdrawn, as I understand
17 it.

18 MS. NORTHINGTON: Thank you.

19 BY MR. FUSS:

20 Q. You had testified regarding DNA studies found in
21 the vagina?

22 A. Yes, sir.

23 Q. And you had mentioned Green's study?

24 A. So what I had testified to was touch DNA. And

1 Dr. Green out of California, the California Clinical Forensic
2 Training Center, had done a webinar in 2014 and was talking
3 about touch. It was a touch DNA webinar. And it wasn't
4 specifically about DNA in the genital area. It was touch DNA
5 on the body.

6 And it was grappling type of touch and it was, you
7 know, different types of grappling and how long and that kind
8 of thing. And I think his conclusions were about touch DNA
9 on the body, not necessarily in the genital area -- I'm sorry
10 -- not necessarily not in the genital area.

11 Q. Other than the webinar, have you gone to any
12 educational programs regarding the transfer of, quote, your
13 word, touch DNA, in the genitalia or vaginal area on
14 patients?

15 A. I don't remember if I have gone to any training.
16 I have read some research articles, and I'm sorry, I can't
17 even come up with those right now. But I have a few. And I
18 just can't tell you specifically when.

19 Q. Would they be noted on your CV?

20 A. No. I don't -- I just -- on my CV I note when I
21 go to training and how long it is and who put it on and that
22 type of thing, but I don't list all of the things I go to in
23 those trainings.

24 Q. And based on your answer regarding trainings, it

1 seems that has been a while ago, would that be fair to say,
2 based on your answer?

3 A. 2014, that's correct.

4 Q. That's the last time you've gone to any education
5 regarding touch DNA?

6 A. So I watched another webinar just at the end of
7 2019 where they talked about lips and that type of touch DNA
8 and transfer of DNA with lips, so not fingers. But lips on
9 lips and oral DNA, that type of application.

10 Q. I'm sorry to interrupt you. When you say lips,
11 you're talking about mouth lips?

12 A. Correct, oral contact.

13 Q. Lip to lip?

14 A. Yes.

15 Q. Mouth lip to mouth lip?

16 A. That's correct. So that type of DNA or tongues in
17 the mouth. Actually, it was kissing, tongue kissing, that
18 type of touch DNA. Specifically with fingers, I can't give
19 you anything specific about that since 2014.

20 Q. So back in 2014 -- or strike that. In 2018, you
21 were talking about kissing lip to lip contact, tongue to
22 tongue contact and kissing scenario. Do you know if any --
23 do you know -- do you remember the name of the author or the
24 presenter?

1 A. I do not. I know it was through the International
2 Association of Forensic Nurses, but I don't know who the
3 author was.

4 Q. Did they talk about the possibility of finding and
5 collecting DNA through that contact?

6 A. That was the goal. And, of course, technique
7 basically for collecting oral swabs and how to collect the
8 best oral swabs. Again, a pretty limited study in that the
9 collection was within minutes after contact and certainly not
10 doing, you know, a type study of, you know, after two hours,
11 after four hours, that kind of thing.

12 Q. So it didn't discuss the length of time, how long
13 you would find transfer DNA from one person, say, person A to
14 person B, correct?

15 A. Correct.

16 Q. But they did acknowledge in that study in that
17 short window, because they didn't extend it out, that they
18 did collect DNA sample, transfers from A to B, or B to A?

19 A. I don't believe they did.

20 Q. You don't believe they did?

21 A. No.

22 Q. Do you have a copy of that within your -- back at
23 your office?

24 A. I should.

1 Q. We're probably going to have to take a break at
2 some point. Would you be kind enough to send me a copy?

3 THE COURT: How much longer do you anticipate
4 going?

5 MR. FUSS: A while.

6 THE COURT: That's not very helpful.

7 MR. FUSS: I would say probably at least a half an
8 hour.

9 THE COURT: All right. It would appear, then,
10 ladies and gentlemen, now might be an appropriate time to
11 take a break for the evening. During this recess, it is your
12 duty not to converse among yourselves or with anyone else on
13 any subject connected with trial or to read, watch or listen
14 to any report of or commentary on the trial by any person
15 connected with the trial or by any medium of information,
16 including, without limitation, newspaper, television, radio,
17 Internet or smart phones. You're not to form or express an
18 opinion on any subject connected with this case until it is
19 finally submitted to you after the presentation of evidence
20 and arguments of counsel are concluded.

21 For your purposes, ladies and gentlemen, we'll be
22 in recess overnight until 9:00 a.m. tomorrow morning. I
23 anticipate we'll renew your receipt of evidence at 9:00 a.m..
24 Please rise for the jury.

1 (The following proceedings were had outside the
2 presence of the jury.)

3 MS. NORTINGTON: Your Honor, may I approach the
4 podium to remove the exhibit?

5 THE COURT: Ms. Robison, you may step down. Thank
6 you for your time. Please be here tomorrow morning as
7 Mr. Lee or Ms. Northington may direct.

8 MR. FUSS: May I collect the exhibit?

9 THE COURT: Yes. We remain on the record in
10 CR17-0636, the State of Nevada versus Osbaldo Chaparro. Mr.
11 Chaparro is present with his attorneys, as are the attorneys
12 for the State. The jury is outside of the courtroom.

13 First, counsel, are there any matters you believe
14 we need to discuss at this juncture? First, from the State?

15 MS. NORTINGTON: No, your Honor.

16 THE COURT: The defense?

17 MS. BERTSCHY: Yes, your Honor, I do believe we
18 need to put -- there was a sidebar. I don't know if the
19 Court wants to discuss that.

20 THE COURT: I tried to impose upon Ms. Koetting to
21 record it. The sidebar was about the admission of or not of
22 Ms. Robison's report. It appears to me that your conference
23 between counsel cleared up the issue of an artifact in
24 copying. Is that accurate?

1 MR. FUSS: Yes, the State believes and I might be
2 in agreement with them that apparently somehow during the
3 color copying, green shows up on several pages and it was not
4 added by Ms. Robison.

5 THE COURT: And a compliment I would offer, I
6 think my defense colleagues were trying to be cautious about
7 the admission of the report, because it contains confidential
8 information related to the victim, which I appreciate.

9 So it appears to me that in the process of our
10 working around it, you answered the question to the defense's
11 satisfaction about what that green marking is or is not, more
12 importantly.

13 MR. FUSS: That is correct. The only thing I
14 thought I had provided your administrative assistant is a
15 redacted copy where I had whited out, blocked out last name,
16 date of birth, address.

17 THE COURT: I think it's 42 or 42A?

18 THE CLERK: Yes, your Honor.

19 MR. FUSS: We do have it. I'm going to use that
20 for tomorrow.

21 THE COURT: Okay.

22 MR. FUSS: Thank you.

23 THE COURT: You're welcome. Mr. Lee,
24 Ms. Northington, we're moving at pace. I appreciate all the

1 effort it takes to move this along smoothly. Where are we in
2 your lineup?

3 MR. LEE: If we had finished up with Ms. Robison,
4 we would be anticipating a finish before lunch. So we have a
5 half day beyond Ms. Robison.

6 THE COURT: We need to discuss a number of
7 matters, then. First, of course, I need to canvass Mr.
8 Chaparro about his rights to testify, commonly known as a
9 Carter versus Kentucky canvass. Would you like me to do that
10 now, counsel?

11 MR. FUSS: I think it would be better at the close
12 of the State's evidence.

13 THE COURT: I tend to agree with that. But I want
14 you to be prepared, Mr. Chaparro, tomorrow I will offer some
15 detailed information to you about basically your right to
16 remain silent and your choice whether or not to testify.

17 I want you to confer with your attorneys now, as I
18 know you have been all along, and before that canvass
19 tomorrow and then make whatever choice you think is right
20 about testifying. Does that make sense?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: So I anticipate doing that after the
23 close of the State's case, of course, outside the presence of
24 the jury.

1 What witnesses, if any, do you intend to call
2 other than Dr. Danielson?

3 MR. FUSS: Claire Nelli who is noticed as an
4 expert witness. And the rub in that is that she won't
5 arrive, and I'm waiting for my phone, so I don't misstate it,
6 but I don't believe she will arrive until 1:50. If I can get
7 her here sooner somehow, I will do everything to get her here
8 by noon. So that if the State rests at noon, we take the
9 lunch break, that we can then dovetail into her testimony,
10 but I can't promise that, but I will do what I can.

11 THE COURT: Lest I forget to bring up the issue,
12 you all should expect that at some point tomorrow after the
13 close of the State's case during a break either over the
14 lunch hour or another break, which we'll discuss in a moment,
15 we will begin to settle jury instructions. So I want you all
16 to be prepared for that.

17 MR. FUSS: Okay.

18 THE COURT: Because you all have done your
19 homework so assiduously, if there are breaks in the progress
20 of the defense case, for example, if your expert witness whom
21 I believe is coming from California --

22 MR. FUSS: Correct.

23 THE COURT: -- doesn't arrive until approximately
24 2:00 p.m., for lack of an easier way or perhaps an easiest

1 way to describe it, I'll cover the break with the jury. What
2 I mean by that is I'll fall on the sword with the jury to say
3 there are matters that we need to discuss, you don't have to
4 be back until 2:30 or however that works out in terms of the
5 progress of the day.

6 MR. FUSS: All right.

7 THE COURT: It sounds to me like you would then be
8 closing except for Dr. Danielson tomorrow or your client?

9 MR. FUSS: Yes, but I will -- I anticipate calling
10 Dr. Danielson on Friday.

11 THE COURT: Of course, we scheduled the trial
12 around that.

13 MR. FUSS: Okay. And so won't -- as a matter of
14 sort of continuity to the case, airplane lands at 1:50 is
15 what the schedule is, not far to get there from here. She
16 would be prepared to testify. I'd ask her to be able to do
17 that. If I can't get her here any earlier, would it make
18 more sense to call them both on Friday, call one at
19 9:00 a.m.?

20 THE COURT: No, sir.

21 MR. FUSS: Fair enough.

22 THE COURT: Moreover, as I was beginning to say,
23 if your client elects to testify, he should be prepared to
24 testify tomorrow. Because I will not, given the timing of

1 the case, expect that he would testify at the end of the
2 defense case.

3 We delayed the start of this case because of Dr.
4 Danielson's schedule. I have no quarrel with that. But if
5 after your other expert testifies tomorrow, there is time
6 available, and Mr. Chaparro elects to testify, that's when I
7 would expect you to call him.

8 MR. FUSS: Just for the record, I'm going to
9 object to that, because the Court is telling me in what
10 manner I -- what order I'm to present my case. I don't
11 expect that to be an issue. But I want to preserve the
12 record. It violates his due process rights to put on his
13 case in the order in which he -- we choose to put it on. I
14 recognize that the Court has given us great latitude. I just
15 want the record protected.

16 THE COURT: Well, in fact, there is no such right
17 you describe, I believe. What I mean by that, of course, is
18 he is entitled to present a case, but as I would expect the
19 State to take witnesses out of order, even to allow the
20 defense to call witnesses in the State case, I expect the
21 defense to use available time as it becomes available in its
22 case.

23 You'll recall for purposes of the record, not for
24 all of you, Dr. Danielson, I pressured mightily to come

1 earlier than Friday. I only reluctantly agreed to start
2 trial in this case Tuesday afternoon for purposes of voir
3 dire when you all made the promise, which thankfully you
4 kept, that voir dire would be accomplished Tuesday and that
5 we would finish on Friday.

6 More particularly, I would be concerned that if
7 the -- if we killed half a day tomorrow, for example, and
8 Mr. Chaparro didn't testify until after both experts
9 testified on Friday, the case would not go to the jury until
10 late Friday afternoon. In my view, that places unnecessary
11 pressure on a jury to deliver a verdict. In fact, I
12 discussed that very possibility when we talked about timing.

13 Finally, it's my recollection that I ordered you
14 all to consider that I would not bump witnesses out of order
15 beyond Dr. Danielson for the very concern I'm talking about
16 now, i.e., when we finish on Friday.

17 So notwithstanding your objection, I just want you
18 and Mr. Chaparro to expect that if he testifies and there's
19 time tomorrow, we're going to use that time.

20 MR. FUSS: Understood.

21 THE COURT: All right. Anything else we need to
22 discuss?

23 MS. NORTHINGTON: No, your Honor.

24 THE COURT: Thank you all for your time.

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on February 12, 2020, at the hour of
8 9:00 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the trial in the matter of THE STATE OF
10 NEVADA, Plaintiff, vs. OSBALDO CHAPARRO, Defendant, Case
11 No. CR17-0636, and thereafter, by means of computer-aided
12 transcription, transcribed them into typewriting as herein
13 appears;

14 That the foregoing transcript, consisting of pages 1
15 through 363, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 10th day of September 2020.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24