

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSBALDO CHAPARRO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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No. 81352 Elizabeth A. Brown
Clerk of Supreme Court

**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 5

JOHN L. ARRASCADA
Washoe County Public Defender

CHRISTOPHER J. HICKS
Washoe County District Attorney

KATHRYN REYNOLDS
Deputy Public Defender
350 South Center Street,
5th Floor
Reno, Nevada 89501

JENNIFER P. NOBLE
Chief Appellate Deputy
One South Sierra Street,
7th Floor
Reno, Nevada 89501

Attorneys for Appellant

Attorneys for Respondent

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1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
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

10 --oOo--

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

19 TRIAL VOLUME IV

20 February 14, 2020

21 8:45 a.m.

22 Reno, Nevada

23
24 Reported by: STEPHANIE KOETTING, CCR #207,
Computer-Aided Transcription

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APPEARANCES:

For the State:

OFFICE OF THE DISTRICT ATTORNEY
By: MATT LEE, ESQ.
By: MARIAH NORTHINGTON, ESQ.
P.O. Box 30083
Reno, Nevada

For the Defendant:

OFFICE OF THE PUBLIC DEFENDER
By: TOBIN FUSS, ESQ.
By: KENDRA BERTSCHY, ESQ.
350 S. Center
Reno, Nevada

1 RENO, NEVADA, February 14, 2020, 8:45 a.m.

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3 --oOo--

4 THE COURT: This is CR17-0636, the State of Nevada
5 versus Osbaldo Chaparro. Mr. Chaparro is present with his
6 attorneys. I show the appearance of the attorneys for the
7 State. We will now settle jury instructions.

8 What I intend to do first, folks, is number the
9 instructions that we'd agreed upon and then place into the
10 record any objections to those instructions or any other
11 instructions any of you would like to proffer.

12 Jury instructions number 1 through 33 have been
13 numbered by my wonderful law clerk, Ms. Palafox. You should
14 have a set of those 1 through 33 in front of you. Let me
15 ask, first, Mr. Lee or Ms. Northington, on behalf of the
16 State, do you have any objections to instructions numbered 1
17 through 33?

18 MR. LEE: No, your Honor. Thank you.

19 THE COURT: Are there any instructions not
20 contained in instructions numbered 1 through 33 that you
21 would have me give?

22 MR. LEE: No.

23 THE COURT: Thank you. Mr. Fuss, are there any
24 instructions in those numbered 1 through 33, or Ms. Bertschy,

1 to which you object?

2 MS. BERTSCHY: No, your Honor.

3 THE COURT: Are there any additional instructions
4 you would have me offer?

5 MS. BERTSCHY: Yes, your Honor.

6 THE COURT: Please, I think we had two that we
7 identified. One begins with the phrase, in deciding the
8 facts. Would you like to discuss that one first?

9 MS. BERTSCHY: Thank you, your Honor. With
10 respect to that instruction, we believe it's more appropriate
11 to include this instruction versus the one that the State
12 included in their packet. This instruction is based off the
13 Ninth Circuit Model Criminal Jury Instruction at 3.9. We
14 believe that it reads easier and is easier for the jury to
15 understand and is more comprehensive.

16 THE COURT: I appreciate that. I've indicated
17 that I will not include this instruction. I believe the
18 concepts contained in the instruction offered, I'll call this
19 defense, offered and not given number one, I believe the
20 contents are adequately covered by an instruction contained
21 in the so-called stocks, although we don't have formalized
22 stocks.

23 And the only real objection I have to this is it
24 looks like it's sort of like the founding father

1 constitutional argument, the federalist and anti-federalist,
2 do you list the rights to be enumerated or not? And because
3 this enumerates rights, I fear that sometimes the jury will
4 think these are the only things they can consider. I
5 recognize there is permissive language. But I will not give
6 that instruction.

7 The next one that we marked is, while you're not
8 bound by the testimony, and your thoughts on that, please?

9 MS. BERTSCHY: Thank you, your Honor. This
10 instruction is based off of the case State versus Watts,
11 W-a-t-t-s, for the record. It's located at 52 Nevada 453,
12 290, P732 at page 737. This case is from 1930 and was
13 affirmed in 1931 by 53 Nevada 200.

14 The reason why we think this is appropriate, we do
15 believe that it more adequately expresses how the jury is to
16 view the expert witness testimony. And, more importantly,
17 we've had discussions from Ms. Robison about areas that were
18 outside of her expertise and we believe that this more
19 appropriately covers what the jury should consider as expert
20 testimony versus what they shouldn't based on their own
21 review of the expert witness' testimony.

22 THE COURT: Thank you. I'm looking for the
23 instruction in the packet 1 through 33 that talks about
24 expert witnesses. If anybody has that handy, by all means,

1 direct me to it. But there is an instruction that is
2 included in the packet that talks about specialized training
3 that qualifies a person to act as an expert. And I believe
4 that instruction is the more commonly given instruction and
5 adequately covers the field. Did you find it?

6 MS. BERTSCHY: For the record, it is instruction
7 number 31.

8 THE COURT: Thank you very much. I was not
9 looking far enough. There's no great meaningful difference
10 between the two except that the instruction at number 31
11 actually breaks the concepts into three paragraphs, which in
12 my view, in keeping with your prior objection involving the
13 prior instruction, makes it more readable and easier to
14 understand.

15 I will certainly allow you to argue in the way
16 that you believe this instruction enables you to argue, so
17 that you may know, but I won't give that instruction.

18 I wanted to make sure we put into the record, Mr.
19 Chaparro, of course, has joined us this morning. Welcome to
20 you, sir. Mr. Chaparro, I think will agree, he had elected
21 not to participate in the settling of instructions last
22 night, correct, Mr. Chaparro?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Thank you. I also wanted to indicate

1 that we have had a number of conversations about limiting
2 instructions and you had not proffered a limiting instruction
3 and I just want to make sure that the record explicitly
4 reflects that's a choice.

5 MR. FUSS: May I approach?

6 THE COURT: Yes.

7 MR. FUSS: Related to that issue, in relying on
8 MacLellan v. State, at this point we will not ask for
9 limiting instruction.

10 THE COURT: I, of course, respect that decision
11 and leave that to your good graces. I had indicated I would
12 give it analogous to the circumstance of your client
13 testifying. I will only highlight by a limiting instruction
14 this issue if you ask me to. And you've asked me, or not
15 asked me to, I respect that, so I will not give any limiting
16 instruction related to his prior bad act.

17 Are there any other issues we need to talk about
18 outside the presence of the jury from the State's
19 perspective?

20 MR. LEE: No, thank you.

21 THE COURT: From the defense's perspective, any
22 other issues we need to discuss?

23 MS. BERTSCHY: No, your Honor. Thank you.

24 THE COURT: We'll be in recess subject to the call

1 of the jury at 9:00.

2 (A short break was taken.)

3 THE COURT: We're back on the record in CR17-0636.
4 All parties are present and we're outside the presence of the
5 jury. Verdict forms, I didn't give you an opportunity to
6 toss a coin.

7 MS. BERTSCHY: I apologize, your Honor. I
8 neglected to remind you.

9 THE COURT: You don't need to apologize. I do.
10 Anybody got a quarter?

11 MR. FUSS: I leave as little metal on me when I
12 walk through this place.

13 THE COURT: Let me place into the record -- thank
14 you, deputy. Let me place into the record the rationale for
15 what we're doing so you may know, Mr. Chaparro. Your
16 attorneys are requested and you're welcome to remain seated.
17 Thank you for that courtesy. Your attorneys had requested
18 that the forms of verdict be ordered not guilty first and
19 then guilty, as opposed to guilty and not guilty. There is
20 no legal precedent for it and, frankly, I'm not sure it
21 matters one way or another.

22 But inasmuch as we're in Nevada, I had suggested I
23 would let a toss of the coin decide this issue and I don't
24 think anybody has any objection to that. It is literally

1 chance is the reason for it and it's got a connection to our
2 history. Anybody have any quarrel with that?

3 MR. LEE: None from the State.

4 MR. FUSS: No, your Honor.

5 THE COURT: So the defense can call it and I'll
6 flip it.

7 MS. BERTSCHY: Heads, please.

8 THE COURT: Tails it is. And so I'll leave them
9 ordered the way they are.

10 MS. BERTSCHY: Thank you, your Honor.

11 THE COURT: Thank you for reminding me. I'm sorry
12 I forgot.

13 (Discussion at the bench.)

14 THE COURT: This is case CR17-0636, the State of
15 Nevada versus Osbaldo Chaparro. Mr. Chaparro is present with
16 his attorneys. I show the appearance of the attorneys for
17 the State. I show the appearance of the jurors and the
18 alternates. We are in the middle of the examination of
19 Ms. Nelli.

20 MR. FUSS: Thank you, your Honor. We ask that she
21 be called.

22 THE COURT: Please. Welcome back, ma'am. I
23 remind you, you remain under oath.

24 THE WITNESS: Thank you. Good morning.

1 THE COURT: Good morning. Please go ahead and
2 pull that microphone in front of your face, if you would.
3 Please give your attention to Mr. Fuss.

4 DIRECT EXAMINATION CONTINUED

5 BY MR. FUSS:

6 Q. Good morning, Ms. Nelli. How are you?

7 A. Good. Thank you.

8 Q. We left off yesterday, I believe we were just
9 getting into what I call the, quote, unquote, hard copy of
10 the paper copy of Ms. Robison's report. Do you recall that?

11 A. Yes.

12 Q. I want to turn your attention to what would be
13 called Northern Nevada SART at the top where it has sort of
14 general findings. Do you recall reviewing that?

15 A. I do. May I see a copy?

16 MR. FUSS: Sure. May I approach with what has
17 been marked as Exhibit 42?

18 THE COURT: Please approach freely.

19 BY MR. FUSS:

20 Q. If you could take a chance to review that, please?

21 A. Yes.

22 Q. Will you put it up on the bar and turn it over?

23 A. Pardon me?

24 Q. Would you put the report where you are and just

1 turn it over on the bar.

2 A. Okay.

3 Q. Thank you. So you recall, you just looked at that
4 section, right?

5 A. Yes.

6 Q. And when we look at the exam section regarding,
7 quote, unquote, perianal exam, what area of the body?

8 A. It's around the anus.

9 Q. And there's an area between the vagina and the
10 anus, is that correct?

11 A. Yes.

12 Q. What is that called?

13 A. Perineum.

14 Q. Okay. And you are familiar with the -- you've had
15 a chance to review the video in this case?

16 A. Yes.

17 Q. After reviewing the video, what would you have
18 done differently regarding swabbing of the buttocks area, the
19 lower back area, what would you have done?

20 A. From -- I would swab it using two swabs, we do
21 everything with two swabs, just for the possibility of any
22 DNA.

23 Q. And because it indicates on Ms. Robison's report
24 nothing was done, correct?

1 A. Correct.

2 Q. All right. What other things would you try to do
3 when talking to a patient that you encounter?

4 A. Well, what we do is have the patient talk to me
5 after we do all the medical to make sure everything is okay.
6 Sit down and talk to the patient and have her tell us in her
7 words what happened. Maybe a few extra questions we want to
8 ask that she didn't cover. If she said there was vaginal
9 penetration, I would do a vaginal exam with a speculum.

10 Q. And any time in your experience, you would do a
11 speculum whenever there's an allegation of vaginal
12 penetration?

13 A. Yes.

14 Q. And I think you testified to that yesterday, but
15 just to be clear, you're looking for injury?

16 A. Yes, possible injury to the wall.

17 Q. Tell me the importance of medical history when
18 talking to a patient and the possible effects on your
19 findings?

20 A. What we do with the medical history, the most
21 important is make sure that as of right that moment, we can
22 do a SART exam and they didn't have to be seen more
23 medically. But different things affect different injuries,
24 the age of the patient, what medications they might be on,

1 different things that might change what my outcome was of
2 what I found.

3 Q. How does age affect?

4 A. Age, because the older you get, the more pliable
5 your skin is. So there's more likely to be more injury,
6 because it's more sensitive and more easily torn. Younger
7 skin is usually healthy. Again, you need to know their
8 medical history to make sure that is true.

9 Q. With a younger patient, what questions would you
10 ask regarding the, quote, unquote, pliability of the skin?

11 A. All we would do is question her if she had any
12 recent surgeries in that area, any recent pregnancies or
13 deliveries, any medical issues or problems in the recent
14 past.

15 Q. Are there medications that could affect the
16 pliability of that area?

17 A. Well, there could be. If someone, it's usually
18 older, if they're on, say, blood thinners or something like,
19 that would make it more easily bleed.

20 Q. Having reviewed everything in this case, what are
21 your final conclusions regarding your findings?

22 A. When I reviewed the case, I did not see any -- see
23 any injury. I did not see any dye uptake at the 6:00, 5:00
24 or 6:00 where she says. There's no -- no abrasion that I see

1 where the dye picked up anywhere. I did not see any injuries
2 from my reading of it.

3 Q. What would you expect to see in relation to the
4 blue dye uptake in relation to an abrasion or linear injury?

5 A. When you apply the toluidine blue dye and then
6 when you take it off, what it does is it kind of -- I don't
7 want to use the word the enhances, because then you think
8 that maybe it wasn't there before. It highlights. It
9 highlights the area because of where the skin has been
10 disturbed. So you can see around the edges of the skin where
11 it was disturbed.

12 Q. So around the edges of the injury, you would
13 expect blue dye to stick?

14 A. Correct.

15 Q. Not to be sort of pooled in that area?

16 A. Yes. Diffused would be a word.

17 Q. Diffused? That's the medical term?

18 A. Yeah. If it was just really not adhering to
19 anything other than normal irritation.

20 Q. Regarding the area to 12:00, regarding the
21 clitoral hood and the sulcus area at 3:00, what are your
22 findings regarding your review of the videotape, the still
23 photos in this matter?

24 A. On the sulcus, when I went through the video

1 several times, as I saw her move it over, I could not see any
2 injuries. There's a few little dots that maybe still could
3 have been from hair follicles.

4 Q. And the hair follicles would be present and,
5 quote, unquote, appear as injury due to what?

6 A. Shaving or just the hair follicle sometimes,
7 because they've been cut down low, it just absorbs the dye.
8 It's not injury. It's just --

9 MR. FUSS: I have nothing further, your Honor.
10 I'll tender the witness.

11 THE COURT: Cross examination.

12 MS. NORTHINGTON: Your Honor, thank you.

13 CROSS EXAMINATION

14 BY MS. NORTHINGTON:

15 Q. Good morning.

16 A. Good morning.

17 Q. The first question yesterday was about your
18 occupation, correct?

19 A. Correct.

20 Q. Your answer was, I'm a forensic nurse examiner,
21 but then you corrected yourself and you said you worked in
22 consulting?

23 A. Yes. I was a forensic nurse examiner for
24 20 years. When I left that job, I went into consulting.

1 Q. So you're not a currently practicing forensic
2 nurse examiner?

3 A. Correct.

4 Q. When did you become SANE certified?

5 A. The first one, I think, it was 2002. I was one of
6 the original testers when they were having -- making it a
7 certified. I think it's 2002, I'm not sure, and then I
8 re-upped for about every three years, two more times.

9 Q. So when was your last recertification?

10 A. 2006, 2008, I'm not sure.

11 Q. So you're not currently certified to be a sexual
12 assault nurse examiner?

13 A. I don't have the certification, but I'm still able
14 to do them. You don't have to have a certification to do
15 sexual assault exams.

16 Q. But to maintain the SANE certification, is part of
17 that maintenance being an actual practicing nurse examiner?

18 A. Correct.

19 Q. That means on an everyday basis given your current
20 occupation, you're not seeing patients face-to-face anymore?

21 A. No.

22 Q. Actually, you own your own company?

23 A. I do.

24 Q. And the purpose of that company is to provide

1 testimony in cases, correct?

2 A. Well, the original reason for the company was I
3 had my own company that we did sexual assault exams. And
4 when that contract was given away, then I used the same
5 company to do consulting, yes.

6 Q. And how long has that company been just about
7 consulting?

8 A. Three years.

9 Q. And consulting means that you look at records of
10 someone else's examination at the request of a party?

11 A. Correct.

12 Q. You form an opinion based on your review of those
13 records?

14 A. Yes.

15 Q. And then you come to testify?

16 A. Yes.

17 Q. And, in fact, you've gone to trainings on
18 courtroom testimony?

19 A. Yes.

20 Q. In this case, was your consulting done at the
21 request of the defense?

22 A. Yes.

23 Q. Do you get paid for these consulting gigs?

24 A. Yes.

1 Q. How much?

2 A. 300 an hour.

3 Q. Is that how much you charged in this case?

4 A. Yes.

5 Q. How many hours did you spend prior to testifying?

6 A. About six hours.

7 Q. Six hours at 300 an hour?

8 A. Yes.

9 Q. What about to testify? How much do you charge to

10 testify?

11 A. It will be 300 an hour. I charge 1500 for travel,

12 et cetera.

13 Q. That's how much you charged in this case?

14 A. Yes.

15 Q. Yesterday you testified that you've conducted or

16 overseen 2,000 sexual assault examinations?

17 A. Conducted, yes.

18 Q. That's how many you've personally conducted?

19 A. Yes.

20 Q. When was the last time you conducted an

21 examination?

22 A. 2016.

23 Q. This morning you testified very briefly about

24 swabbing for DNA when you're doing these examinations,

1 correct?

2 A. Correct.

3 Q. Do you remember testifying in California -- I'm
4 sorry -- do you remember testifying in the State of
5 California in the case of The People versus Michael D'Andrea
6 Webb regarding a sexual assault examination you conducted in
7 2010 wherein you testified that injuries were found and
8 specimen collection swabs were conducted and yet no DNA was
9 found?

10 THE COURT: Slow down a little bit.

11 MS. NORTHINGTON: I apologize. So sorry. Do you
12 need me to repeat the question?

13 THE WITNESS: I don't remember.

14 BY MS. NORTHINGTON:

15 Q. You don't remember testifying in that case?

16 A. Not specifically that case, no. I would have to
17 review the case.

18 Q. Understood.

19 A. Go ahead. I'm sorry. Finish your question.

20 Q. You're Claire Nelli, correct?

21 A. Yes.

22 Q. And you were a sexual assault nurse examiner in
23 California?

24 A. Correct.

1 Q. Was that true in 2010?

2 A. Yes.

3 Q. Do you remember performing an examination on a
4 woman named Angelique in 2010?

5 A. I'm sure I did, but my memory of that, I have no
6 memory of that actual exam. I've done too many to have
7 memories of any exam.

8 Q. Are you aware that that case resulted in a
9 published opinion in California?

10 A. No, I'm not.

11 Q. Would reviewing that opinion, which includes a
12 factual synopsis of your testimony, refresh your recollection
13 of that testimony?

14 A. Sure.

15 MS. NORTINGTON: May I approach the clerk, your
16 Honor?

17 THE COURT: Yes.

18 MS. NORTINGTON: May I please have this marked
19 for identification purposes?

20 THE CLERK: Exhibit 24 marked for identification.

21 MS. NORTINGTON: Thank you.

22 BY MS. NORTINGTON:

23 Q. Ms. Nelli, I'm showing you Exhibit 24, which is
24 the Court opinion in California regarding the Webb case.

1 Please take a moment to read the factual synopsis to yourself
2 and look up when you're finished.

3 A. You want me to read my part, what they said about
4 my name, or the whole thing?

5 Q. It's only in the factual synopsis. You only need
6 to read the background information.

7 A. Is that the next page?

8 Q. It's on the first page starts on the right hand
9 side of the first page.

10 A. Oh, yes. I see it.

11 Q. Second paragraph down.

12 A. Yes. Okay. Yes.

13 Q. You can go ahead and flip that over for me. Does
14 reading that synopsis of that testimony refresh your
15 recollection about that case?

16 A. Yes.

17 Q. And do you remember performing that sexual assault
18 examination in 2010?

19 A. Not really.

20 Q. Okay. Do you remember testifying in that case
21 that you found injuries on that individual in 2010?

22 A. I don't remember. I probably can still answer
23 what your question was.

24 Q. Does that refresh your recollection as to the fact

1 that you did testify in that case?

2 A. Yes.

3 Q. And do you remember testifying that those injuries
4 were consistent with vaginal penetration?

5 A. Yes.

6 Q. And are you aware that DNA testing was conducted
7 in that case?

8 A. Yes.

9 Q. And that no results were found?

10 A. Yes.

11 Q. For this case, you testified that you reviewed
12 multiple items, including Deborah Robison's report, police
13 reports?

14 A. Yes.

15 Q. The preliminary hearing testimony?

16 A. Yes.

17 Q. And two videos?

18 A. Correct.

19 Q. One of those videos was the sexual assault
20 examination video?

21 A. Yes.

22 Q. What was the other video?

23 A. The video as the assault happened.

24 Q. Did you personally see the patient at any time?

1 A. No.

2 Q. Have you ever met Lindsey?

3 A. No.

4 Q. Did you listen to the interview of Lindsey, the
5 police interview?

6 A. No.

7 Q. Do you know how many times the victim shoved his
8 hands in between her legs?

9 A. No.

10 Q. Do you know what the defendant did with his hand
11 as the victim struggled to get away?

12 A. Yes. He grabbed her from behind, and according to
13 her, put his hand behind her and got into her vaginal area.

14 Q. Do you know what he did with his fingers as she
15 was trying to pull away?

16 A. Scratched, I guess.

17 Q. Do you know the length of the defendant's fingers?

18 A. No, I don't.

19 Q. The size of his hands?

20 A. No.

21 Q. Do you know anything about the defendant?

22 A. No.

23 Q. Would you agree that there are a fair amount of
24 sexual examinations conducted where no injuries are found?

1 A. Yes.

2 Q. Does a lack of injury definitively establish that
3 no assault occurred?

4 A. No.

5 Q. Yesterday when you were testifying about the dye
6 up near the top of Lindsey's genitalia, the sulcus parallel
7 to the clitoral hood?

8 A. Yes.

9 Q. And today you discussed the pliability of the
10 genital tissues in the female?

11 A. Yes.

12 Q. Is it fair to say that that female genitalia has
13 multiple folds and creases at varying depths?

14 A. Yes.

15 Q. It's quite a complex organ for lack of a better
16 term?

17 A. Yes.

18 Q. Would you agree that a forensic nurse who is
19 actually present in the room with hands-on on the patient
20 would have a better understanding of what happened to that
21 genitalia?

22 A. I'm not sure of your question.

23 Q. Would you agree that the nurse who actually saw
24 and touched the genitalia would have a better understanding

1 of what had happened than someone who simply reviewed the
2 video later?

3 A. Well, I reviewed everything that she said the
4 patient told her happened, so I would think I had the same
5 history as she had while doing the exam.

6 Q. I'm not talking about the history. I'm talking
7 about the actual visual examination of the various folds and
8 creases and grooves in Lindsey's genitalia.

9 A. Yes, she has hands-on. But the hands-on in the
10 video shows everything I could imagine would need to be
11 shown.

12 Q. So a visual inspection from a video is the same as
13 a visual inspection in person in your opinion?

14 A. No, not the same, but still pretty good. I mean,
15 that's why we take the videos is so someone else can review
16 it and find out if, you know, and review for that person or
17 for a case or whatever.

18 Q. In preparation for your testimony in this case,
19 you prepared a half page report?

20 A. Yes.

21 Q. And can you say to a degree of medical certainty
22 based on your evidence review in this case that this patient
23 was not sexually assaulted?

24 MR. FUSS: Objection, calls for a legal

1 conclusion. She's not qualified to provide that.

2 MS. NORTINGTON: I can rephrase that, your Honor.

3 THE COURT: Go ahead.

4 BY MS. NORTINGTON:

5 Q. Can you say to a degree of medical certainty based
6 on your evidence that the patient was not touched in her
7 genital opening?

8 A. No.

9 Q. Yesterday, you testified quite a bit about this
10 blue dye, the toluidine blue dye. And you said that the
11 purpose of this dye is that it adheres to a layer of skin
12 that is taken off, correct?

13 A. Yes.

14 Q. And that if it's a laceration, the dye adheres to
15 the boundaries of that laceration?

16 A. Yes.

17 Q. Is it fair to say, just paraphrasing, that the dye
18 adheres to broken skin cells?

19 A. Yes.

20 Q. And that it adheres to injured or irritated skin?

21 A. Yes.

22 Q. You testified quite a bit about that top area of
23 Lindsey's genitalia, the clitoral hood area?

24 A. Right.

1 Q. And the findings there. And quite a bit in your
2 testimony and your report is about the hair follicles,
3 correct?

4 A. Correct.

5 Q. Is the hair follicles in your understanding
6 addressed whatsoever in Ms. Robison's report?

7 A. No.

8 Q. It was not part of her findings?

9 A. No, it was not.

10 Q. In your opinion watching the video, you couldn't
11 see an injury in that area to the naked eye?

12 A. No, I couldn't.

13 Q. Are you aware that Ms. Robison has that same
14 opinion?

15 A. Talking about the --

16 Q. The clitoral hood area?

17 A. Yes.

18 Q. And yesterday you testified that you saw a bluish
19 tint on the right hand side of that clitoral hood in the
20 video. Do you remember testifying to that?

21 A. Yes.

22 Q. And that bluish tint is from the dye?

23 A. It could be a dye or a shadow, I wasn't sure.

24 Q. Because you weren't there in person to actually

1 see her genitalia?

2 A. Correct.

3 THE COURT: Slow down.

4 MS. NORTHINGTON: I apologize.

5 THE COURT: I talk very quickly, and if you don't
6 slow down, Ms. Koetting is going to throw something really
7 heavy at me.

8 MS. NORTHINGTON: If that's the case, your Honor,
9 she should throw it at me.

10 THE WITNESS: They usually say it to me. So I'm
11 glad it's not me this time.

12 MS. NORTHINGTON: I apologize, your Honor. I will
13 slow down.

14 THE COURT: Thank you.

15 BY MS. NORTHINGTON:

16 Q. As to your testimony about the bottom area of the
17 genitalia, the 6:00 region, yesterday you testified that to
18 the naked eye you did not see the injury?

19 A. Correct.

20 Q. Then you testified with the dye, you saw no injury
21 because there was no laceration?

22 A. Well, there was no laceration shown.

23 Q. And when Mr. Fuss asked you why you think there's
24 no laceration, you indicated that blue dye --

1 MR. FUSS: Objection, misstates my question.

2 THE COURT: I'm going to give you some latitude.
3 Ladies and gentlemen, again, you've heard the attorneys
4 characterize the testimony of witnesses or now a question by
5 one attorney, your recollection about what the question was
6 and more importantly what the answer was is what matters.

7 I'm going to let you characterize it, but caution
8 you that the jury will hold each of you, as it were, to the
9 accuracy of any such representations. Go ahead, Ms.
10 Northington.

11 MS. NORTHINGTON: Thank you, your Honor.

12 BY MS. NORTHINGTON:

13 Q. When you were expanding on your opinion that there
14 was no laceration found, you indicated that the blue dye
15 enhances the outline of a laceration?

16 A. Yes.

17 Q. And it would be dark blue just like the hair
18 follicles?

19 A. It will be darker blue.

20 Q. What is a laceration?

21 A. A laceration is a blunt force trauma that tears
22 the skin.

23 Q. So in lay person's terms, could it be a cut?

24 A. No. A cut is a sharp, that would be a knife.

1 Q. So it's a tear in the skin?

2 A. It's a tear, like blunt force.

3 Q. How is that different from an abrasion?

4 A. An abrasion is like scraping, if you scrape your
5 knee, if you fall down and it scrapes some skin off.

6 Q. It fair to say at this point, you have reviewed
7 Deborah Robison's report multiple times?

8 A. Yes.

9 Q. To your recollection, does she say anything
10 anywhere in that report about a laceration?

11 A. No.

12 Q. Is it fair to say, in fact, that she finds an
13 abrasion not a laceration?

14 A. Yes.

15 MS. NORTHINGTON: Thank you. No further
16 questions.

17 THE COURT: Mr. Fuss.

18 MR. FUSS: Thank you, your Honor. Briefly.

19 REDIRECT EXAMINATION

20 BY MR. FUSS:

21 Q. Ms. Nelli, in 2010 when you were the SANE examiner
22 for Angelique in that case, once you did the examination,
23 what did you do with the evidence you collected in your
24 report?

1 A. Evidence goes to law enforcement.

2 Q. You gave it to law enforcement?

3 A. Yes.

4 Q. In your capacity in that job, where would that
5 have gone next from law enforcement?

6 A. To their crime lab.

7 Q. And from that point, where would it go?

8 A. I'm not sure. I guess the DAs and everybody would
9 talk about whether or not it was a case that could go
10 forward.

11 Q. Right. And so once you complete that, you pass it
12 on?

13 A. Correct.

14 Q. And you don't form an opinion as to whether to
15 prosecute or not, do you?

16 A. No.

17 Q. You just put your findings in that report and send
18 it on for somebody else to make that decision?

19 A. Yes.

20 Q. In 2010, were you aware of the DNA testing at that
21 time as to what was used to test for DNA?

22 A. No.

23 Q. Are you a DNA expert?

24 A. No.

1 Q. We talked a little bit -- you stated you could
2 have an assault without an injury and you agree with that,
3 right?

4 A. Yes.

5 Q. And in your capacity as a retained consultant for
6 a defendant, have you ever been invited into a SANE
7 examination post sexual assault?

8 A. No.

9 Q. And that's because by the time it gets to somebody
10 who may retain you, it may be months?

11 A. Years.

12 Q. Later. Go ahead, years?

13 A. Yes. Yes.

14 Q. Later before you even get hired?

15 A. Yes.

16 Q. Before you get retained?

17 A. Yes.

18 Q. And the reason that we take pictures is to record
19 a history, right?

20 A. Correct. Yes.

21 Q. And the reason we use a colposcope is to record
22 the history?

23 A. Yes. Record all the photographs and plus the
24 history in her report, everything that we give to law

1 enforcement.

2 Q. And that's why you're subject to what we call peer
3 review, right?

4 A. Yes.

5 Q. And what is the purpose of that?

6 A. Peer review is just to make sure -- let me just go
7 with one of my cases, like one of my nurses do a case. And
8 before -- unfortunately, it's always after it's sent to law
9 enforcement, but we review all photos, we review the reports,
10 what the patient said, et cetera. And if we saw anything and
11 agreed that it was not what she thought it was and we agreed
12 that maybe this was what it was, we would then send the
13 report to law enforcement saying, this is an addendum.

14 Now that we go back and look at the photos,
15 because sometimes when you're just looking, you can miss
16 something or you see something differently, so then we would
17 do an addendum to the report and say, you know, upon review,
18 we found this also or we did not find that.

19 Q. If technology had changed and you re-reviewed your
20 exam, would that affect whether you would send an addendum?

21 A. Say it again. I'm sorry.

22 Q. If there was a change in the quality of
23 technology, could that possibly change your opinion of what
24 you initially found?

1 A. Possibly.

2 Q. Like a better colposcope?

3 A. Possibly, yes.

4 Q. And to be clear, the findings that we are
5 reviewing are what were described by Nurse Robison as a
6 linear abrasion, correct?

7 A. Correct.

8 Q. In other words, in your -- what you testified to,
9 you talked about a skinning of the knees, right?

10 A. Yes.

11 Q. And when you skin your knee, as an example, you
12 have places that have more layers of skin removed versus less
13 layers of skin removed, correct?

14 A. Correct.

15 Q. When you remove one layer of skin in that area,
16 what does the toluidine blue supposed to do?

17 A. It's supposed to outline. It adheres to the
18 healthy skin around the abrasion is a better way to put it.
19 So there's healthy skin around the abrasion, so it adheres to
20 the edges of the abrasion. The inside is too moist for the
21 abrasion, so the outside where it separates from normal skin,
22 you see a line around it with the dye.

23 Q. And when you testified yesterday about that, you
24 used your finger to outline the injury?

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. The term scratched, that wasn't used by Nurse

5 Robison, was it?

6 A. No.

7 Q. In her report?

8 A. No.

9 Q. And you just testified that it was an injury,

10 right? That's what Nurse Robison said?

11 A. Yes.

12 MR. FUSS: I don't think I have anything further.

13 THE COURT: Recross.

14 MS. NORTHINGTON: Based on that, no, your Honor, I

15 do not.

16 THE COURT: May this witness be excused?

17 MR. FUSS: She may, your Honor.

18 THE COURT: Thank you, ma'am. You are free to go.

19 Your next witness, please, Mr. Fuss.

20 MR. FUSS: Dr. Phillip Danielson. May I approach

21 your clerk, please?

22 THE COURT: Yes, you may. Is Dr. Danielson in the

23 hall?

24 MR. FUSS: May I step out?

1 THE COURT: Please. Ladies and gentlemen, I
2 apologize for the delay. The juggle with witnesses is quite
3 a challenge on both sides of the room, anticipating timing
4 and figuring out when people need to be where they need to
5 be. So we'll take a few moments and see if we can't connect
6 with Dr. Danielson. I apologize for the delay.

7 We're going to go ahead and take a recess. I
8 don't know how long the recess will be. We'll take a few
9 moments. During this recess, it's your duty not to converse
10 among yourselves or with anyone else about this trial or
11 connect in any way with this trial. It's your duty not to
12 read, watch or listen to any of report of or commentary on
13 the trial by any person connected with the trial or by any
14 medium of information, including, without limitation,
15 newspapers, Internet, smart phones, television or radio.
16 We'll call you back into the room as soon as we're ready to
17 go. Please rise for the jury.

18 (The following proceedings were had outside the
19 presence of the jury.)

20 THE COURT: This is CR17-0636, the State of Nevada
21 versus Osbaldo Chaparro. We're outside the presence of the
22 jury. All parties and counsel are present. Mr. Fuss, Dr.
23 Danielson.

24 MR. FUSS: I've done my best. I told him to be

1 here at 9:30. I have my investigator trying to find him. He
2 was staying at the Eldorado. He should be here. I'm
3 surprised.

4 THE COURT: All right. Well, we're not going to
5 wait definitely.

6 MR. FUSS: I understand.

7 THE COURT: We will wait a while, I suppose.
8 Counsel, while we have this opportunity, take a moment, make
9 reference to the exhibit list and make sure all the exhibits
10 you want admitted to this juncture have been admitted.

11 MR. LEE: We're comfortable with those proffered
12 by the State, your Honor.

13 THE COURT: Thank you, Mr. Lee.

14 MR. FUSS: Court's indulgence.

15 MS. BERTSCHY: We're fine as well. Thank you,
16 your Honor.

17 THE COURT: I don't intend to stay in recess for
18 more than about 15 minutes. So one way or another, I'll see
19 you all again at 9:55.

20 I apologize for the up and down, ladies and
21 gentlemen. Apparently, Dr. Danielson is here. Let's bring
22 him into the room to look him in the eye, as it were, and
23 then we'll invite the jury into the room.

24 (The following proceedings were had in the

1 presence of the jury.)

2 THE COURT: This is CR17-0636, the State of Nevada
3 vs. Osbaldo Chaparro. Mr. Chaparro is present with his
4 attorneys. I show the appearance of the attorneys from the
5 State. I show the appearance of the jurors and the
6 alternates. I apologize for the brief in and out, ladies and
7 gentlemen. Perhaps one of those heart shaped doughnuts found
8 its way into your lives. Mr. Fuss, your next witness.

9 MR. FUSS: The defense would call Dr. Phillip
10 Danielson.

11 (One witness sworn at this time.)

12 THE COURT: Once you're comfortably seated there,
13 pull your microphone in front of your face, sir, and give
14 your attention to Mr. Fuss.

15 PHILLIP DANIELSON

16 called as a witness and being duly sworn did testify as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. FUSS:

20 Q. Good morning, Dr. Danielson. Please state your
21 name and spell it for the record.

22 A. Good morning. Phillip Danielson,
23 D-a-n-i-e-l-s-o-n.

24 Q. How are you employed?

1 A. I am a professor in the University of Denver in
2 the Department of Biological Sciences and I work as a private
3 consultant in the area of forensic analysis.

4 Q. How long have you been involved with forensic
5 analysis and biological analysis?

6 A. I've been involved with biological analysis for
7 the past 25 years and specifically in forensic analysis for
8 approximately 20 years now.

9 Q. What does that mean in lay terms to the jury?

10 A. Forensic analysis in my field is the application
11 of biology and chemistry to investigations in criminal cases.

12 Q. Specifically what area?

13 A. Specifically, I focus on serology, which is the
14 identification and characterization of body fluids, and DNA
15 analysis, which is the analysis of DNA that can be used to
16 distinguish between different humans.

17 Q. Do you consult in this capacity?

18 A. Yes, I do. I've held a number of consulting
19 positions over the years. Currently, I'm a private
20 consultant. So attorneys or interested parties can contract
21 with me to review casework. I've also served as advisor to
22 the National Law Enforcement and Corrections Technology
23 Center and to private corporations.

24 Q. Specifically related to law enforcement, which law

1 enforcement agencies have you consulted with?

2 A. I'm a science advisor to the National Law
3 Enforcement and Corrections Technology Center. So that is a
4 federally funded program that provides training or capacity
5 building to law enforcement. So in my capacity as the their
6 science advisor, I participate in training mostly District
7 Attorney's and rape and murder investigators throughout the
8 ten-state the Rocky Mountain Region.

9 Q. You had the Rocky Mountain Region in relation to
10 the national umbrella that the National Law Enforcement and
11 Corrections Technology Center service?

12 A. That is correct. The National Law Enforcement
13 Center has several regional offices. I was science advisor
14 for the Rocky Mountain Region. So that covered the Rocky
15 Mountain states and we together training programs for mostly
16 DNA analysis for that ten-state region.

17 Q. What sort of fellowships or what sort of a fellow
18 are you?

19 A. So I'm also a fellow with The Center For Forensic
20 Science Research and Education. This is a nonprofit
21 organization headquartered in Pennsylvania that provides
22 research and education opportunities to aspiring forensic
23 scientists. They have a lot of master students that they
24 train and oversee. I'm involved in that as well as the

1 training of Ph.D. students.

2 Q. Do you do any what they call peer review?

3 A. Yes. Do I participate in peer review?

4 Q. Yes.

5 A. So peer review is the process whereby experts in
6 the field will evaluate manuscripts for publication.

7 Typically, these are research manuscripts. Or you may be
8 asked to review and evaluate proposals for funding from the
9 federal government. So I participate in both of those.

10 For example, the Journal of Forensic Science is
11 one of many professional journals, they will frequently send
12 me -- they and other journals send me papers, research
13 reports to review and to evaluate for quality and
14 reliability.

15 I also work as an ad hoc peer reviewer for the
16 National Institute of Justice and U.S. Department of Defense
17 and the National Science Foundation. In those capacities, I
18 review grants for forensic DNA research for criminal justice
19 purposes. I review cold case grant applications. I review
20 grant applications from law enforcement agencies for
21 laboratory improvement grants. These are grants to buy new
22 laboratory equipment or bring on laboratory capacity.

23 I'm also involved with the Forensic Center of
24 Excellence Review Program. So that reviews regional forensic

1 laboratories to act as regional forensic centers of
2 excellence. And I also participate in the Comprehensive
3 Opioids Funding Program.

4 Q. Have you also provided testimony in criminal
5 cases?

6 A. Yes. I've testified a number of times in a number
7 of different jurisdictions, including here in Nevada. I
8 think on my CV I probably list 30 examples of testimony.
9 Actual number of cases, I don't keep a running tally on
10 anymore, but easily twice the 30 examples that are listed.

11 Q. Have you been qualified as an expert in the State
12 of Nevada before?

13 A. Yes, I have, on multiple occasions.

14 Q. In the Second Judicial District Court?

15 A. Yes, sir.

16 Q. Were you retained in this case?

17 A. Yes, I was.

18 Q. What was your fee?

19 A. So I'm paid \$200 per hour to review criminal case
20 work, prepare for hearings or court testimonies, prepare
21 reports or testify in court.

22 Q. And what specifically were you retained to review
23 and whose work were you retained to review?

24 A. So I was retained in this case to do two things.

1 The first thing that I was retained to do was to observe
2 testing done by the Washoe County Crime Lab for forensic
3 evidence in this case.

4 That required that I go to their laboratory and
5 stand with their analyst, that was Mr. Steve Gresko, as he
6 performed testing on the forensic samples. So that would be
7 the evidence that was collected in this case.

8 After that, then I was retained to review the
9 results of that testing, to prepare a written report on that
10 and then to be here today to explain the contents of that
11 report.

12 Q. And did you prepare a report in that matter?

13 A. Yes, sir, I did.

14 MR. FUSS: May I approach the witness?

15 THE COURT: Yes.

16 BY MR. FUSS:

17 Q. I'm going to hand you what is documented as
18 Exhibit 43. Do you recognize that?

19 A. Yes. This looks to be a copy of the written
20 report I prepared in September of last year for this case.

21 Q. And Exhibit 43 is your report. Did you provide
22 that to the District Attorney's Office through me?

23 A. Yes, through your -- I provided it to your office
24 and I believe you then provided it to the District Attorney.

1 Q. Do you see Mr. Gresko currently in court?

2 A. Yes, in the back there.

3 Q. You guys just waved at each other for the record?

4 A. Okay.

5 Q. Is that correct?

6 A. Yes.

7 Q. When you were invited to observe the DNA testing
8 in this particular case, why was that done?

9 A. So when a defense -- when the defense hires an
10 expert to observe testing, it is typically because the
11 testing that is going to be done is going to consume the
12 entire sample.

13 If you have enough material that you could split
14 it up between the prosecution and the defense, then the
15 defense would have the right to do their own testing. But in
16 some cases, the amount of evidence is very small, and if you
17 split the evidence there's a chance that you might reduce the
18 opportunity to get an interpretable result.

19 In those cases, the State has the right to consume
20 all of this evidence. This is called consumptive testing.
21 In those cases, then, the prosecution typically will notify
22 the defense that they're going to consume the evidence and
23 they will invite the defense, they're not required to send an
24 observer, but they're invited to send an observer to watch

1 the testing take place by the State and to evaluate the
2 quality of that testing.

3 Q. Were there any ground rules or rules in which you
4 were supposed to abide by when you were invited to observe
5 the testing?

6 A. Yes. I provided my curriculum vitae, my resume to
7 the laboratory in advance so they could evaluate my
8 qualifications. Upon my arrival in the laboratory, the
9 laboratory collected a DNA sample from me. And that's
10 important because if you are going to enter a forensic
11 laboratory, they want to have a record of who has been there
12 and what their DNA profiles look like in case a contaminant
13 were to show up that they couldn't explain, they would be
14 able to determine who visited the lab and where that
15 contaminant may have come from.

16 I was provided the protocols from the laboratory,
17 the methods that they use for testing, to review prior to my
18 arrival there. And I was instructed upon my arrival that I
19 could not talk to the analyst during testing, I was not to
20 ask any questions or do anything that might disturb them
21 during their work.

22 So I usually stand off to their side and slightly
23 behind them and I observe the testing and take notes during
24 the course of testing.

1 Q. And is that to avoid any what I would term
2 contamination of the sample in which they're analyzing?

3 A. Right. I wear personal protective equipment when
4 I'm in the laboratory. So I'm provided with a face mask and
5 gown so I can -- so I'm not spreading my own DNA.

6 I stand usually a little behind the analyst so
7 that I can look over their shoulder. That gives me the best
8 view. And the further back you stand, the less chance there
9 would be any inadvertent DNA contamination.

10 Q. Do you recall what Mr. Gresko was wearing at the
11 time?

12 A. Yes. He was also wearing personal protective
13 equipment, Latex examination gloves, an exterior lab coat and
14 a surgical type face mask.

15 Q. I'm going to approach with Exhibit 50 and
16 Exhibit 40 for the record. I'm going to first ask you if you
17 recognize what's been marked as Exhibit 40.

18 A. Yes. This is one of the laboratory reports.

19 Q. I haven't asked you. Do you recognize it?

20 A. Yes, I do.

21 Q. I'm going to hand you what is marked as
22 Exhibit 50. Do you recognize what that is?

23 A. Yes, I do.

24 Q. And describe Exhibit 50.

1 A. So Exhibit 50 is a paper copy of what is commonly
2 referred to as the laboratory case file or the litigation
3 pack. So this starts off on the first page with --

4 THE COURT: Don't display it to the jury. Doctor,
5 don't display it to the jury. It has not been admitted.

6 THE WITNESS: I understand. Thank you. It starts
7 off on the first page with the laboratory report and then the
8 subsequent pages, which make up the majority of the stack,
9 the subsequent pages are the work sheets, the laboratory
10 notes, instrument output files that are all the documents
11 which support or which go into the opinions listed in the top
12 page report.

13 BY MR. FUSS:

14 Q. What is the smaller exhibit?

15 A. The smaller exhibit is simply the lab's summary
16 report from a second round of testing.

17 Q. And was that also a part of the larger exhibit you
18 just talked about?

19 A. If this exhibit is the comprehensive litigation
20 pack, then, yes, it should be part of that as well.

21 Q. What else did you review in preparation for your
22 testimony regarding the incident in this case?

23 A. So I also reviewed the electronic data. So not
24 just the paper reports, but the actual original data that was

1 generated by the instrumentation in the laboratory. This is
2 data which can't exist just in paper form. It's an
3 electronic file.

4 I also reviewed a video that was provided and I
5 reviewed my notes from the observation of testing, as well as
6 the professional literature in the area of trace and touch
7 type DNA analysis.

8 Q. Briefly, tell the jury who are some of the more
9 prominent authors of literature in your field of study?

10 A. Specifically in regard to trace and touch type
11 DNA?

12 Q. Yes.

13 A. Roland van Oorshot.

14 Q. May I stop you? Could you spell it for the
15 record?

16 A. I would have to -- I would have to look it up.

17 Q. Could you look it up?

18 A. I think his name was originally Dutch.

19 Q. Keep going. I forgot that I already provided it.

20 A. So van Oorshot is one of these leaders, Joanne
21 Bright is another, Georgina Meacham, Allen Jamieson. Let's
22 see. Gorette publishes a large number of studies on touch
23 type DNA. Kale has published. So there's numerous authors,
24 researchers and authors who have published in this area.

1 Q. I'm going to approach with what has been marked as
2 Exhibit 2, which is a video of the assault in this case. Did
3 you review that?

4 A. Yes, I did.

5 Q. In preparation for your testimony?

6 A. Yes.

7 MR. FUSS: If I might have this top page marked as
8 exhibit next in order.

9 THE CLERK: Exhibit 54 marked for identification.
10 BY MR. FUSS:

11 Q. For the record, I have what is called a Post-It
12 pad, approximately 25 inches by 30 inches, as depicted on the
13 frame of it and putting it on an easel. Dr. Danielson, would
14 you step from the well, please, and list the items of
15 evidence regarding DNA testing in this case down the side of
16 the page that you were asked to review?

17 A. Yes, sir.

18 Q. For record, will you indicate what you just wrote
19 on the Post-It sheet?

20 A. There were five items that were tested. The right
21 hand fingernail swabs, the left hand fingernail swabs. These
22 were from Ms. La Pier. The vaginal swab --

23 MR. FUSS: Court's indulgence.

24 THE WITNESS: So the right and left finger -- the

1 right and left had fingernail swabs from Lindsey, the vaginal
2 swab collected from Lindsey, the vulva swab collected from
3 Lindsey. So that would be on the more external genitalia.
4 And a sample labeled A1, which were the black tights swab.
5 That was a swabbing of the interior surfaces of the black
6 tights that Lindsey was wearing.

7 BY MR. FUSS:

8 Q. Would you go ahead and have a seat, please? And
9 by reviewing all of this, you are going to talk today about
10 what is commonly called touch DNA or transfer DNA, is that
11 correct?

12 A. The term that is preferred in the field is either
13 trace or touch type DNA. We don't like to use the word touch
14 DNA, because that carries with it the additional implication
15 that it necessarily came from touch, which we don't know for
16 a fact.

17 Q. Would you extent your right index finger please?
18 Did we just touch?

19 A. Yes.

20 Q. Please go into what that means when you and I
21 touch fingers as it relates to your field of expertise and
22 how it relates to this particular case.

23 A. So whenever you come into physical contact with
24 another person, there's the potential for DNA to be

1 transferred from one individual to the other. This is called
2 the low card principle. It is the concept that whenever two
3 people come into contact with each other, there is an
4 exchange of biological material, something that you can --
5 you can use to show that contact occurred.

6 So in the context of DNA, when you touch, the
7 surface of your hands is a good source of skin cells and what
8 are called -- what is called cell free DNA. The surface of
9 your skin is mostly dead skin cells. As those skin cells
10 breakdown, they release DNA. So you have a combination of
11 free DNA and cells, some with DNA, some without, on the
12 surface of your hands.

13 When you touch, then some of that material on your
14 hand will transfer to another person and some of your DNA
15 would have transferred to me.

16 Q. So if you were swab my finger where we touched,
17 you would expect to find your DNA?

18 A. It would be -- that would be a reasonable
19 expectation.

20 Q. And the contra?

21 A. Correct.

22 Q. If you swab your finger, my DNA should be there
23 where we touched finger to finger?

24 A. Yes, that's correct.

1 Q. How is that applicable in this case?

2 A. Well, it's applicable in this case, because the
3 question that is of interest to the Court and obviously to
4 the jury is, was there physical contact between Osbaldo and
5 Lindsey? And so you would use trace or touch type DNA
6 analysis to look for evidence to support the proposition,
7 support the theory that there was physical contact.

8 And if you found DNA, that would -- if you found
9 DNA consistent with Osbaldo, that would support that
10 proposition, it would support that hypothesis.

11 Q. What would you use -- first of all, what is the
12 ideal way to collect the evidence from the places that were
13 touched -- where contact was made between two strangers?

14 A. So best practices currently is that you would
15 swab, if you were looking for trace DNA or touch type DNA, on
16 the surface, you would swab the surfaces that you were
17 interested in.

18 So for the vagina, you would swab the vagina. For
19 the external genitalia and vulva, you would swab that area.
20 For the fingernail clippings or fingernail samples, you would
21 swab underneath fingernails. You could collect the
22 fingernails in their entirety if you wanted to.

23 And for the black tights, you would swab the area
24 of the black tights that you were looking for evidence of

1 physical transfer of DNA.

2 Q. And you reviewed the video in this case?

3 A. Yes, I have.

4 Q. Of the contact between Mr. Chaparro and Lindsey?

5 A. Yes, I have.

6 Q. If you were going to use that as a roadmap to look
7 for samples, explain how you would use that?

8 A. So the video itself, I mean, doesn't show me a
9 close up of exactly what had happened. But from the video,
10 what it appears is that the article of clothing that you
11 would be interested in swabbing would be the tights that
12 Lindsey was wearing. And then the video together with the
13 description of the case would indicate that you would swab
14 the interior of the tights and probably focus your attention
15 on the crotch area of that or based on the video possible the
16 back area of the inside of the tights.

17 Q. And what about on Lindsey from -- if the hand went
18 down the back of the tights, would you swab the lower back?

19 A. That would be an option, yes, you could swab.
20 Typically, in a case of alleged sexual assault, laboratories
21 will typically collect more samples than just the most
22 probable areas. And they do that in an effort not to miss
23 anything or on the chance that the victim's memory is not
24 exactly clear.

1 So it would be common in a case of any allegation
2 of digital penetration to swab the vaginal canal, the
3 exterior genitalia. You may extend below that to the
4 perineum, the skin between the vagina and the anus. And then
5 if it's alleged that the perpetrator's hand came down from
6 the back, you may swab the buttocks, the anal areas or the
7 lower back.

8 Q. In talking about the contact you and I had, tell
9 the jury a little bit about how my DNA gets on your fingers,
10 your DNA gets on. How does that transfer occur? What is the
11 process?

12 A. Right. So DNA, DNA, obviously is a very small
13 molecule and there's a large amount of it on your hands. In
14 fact, every one of your cells has DNA in it. Humans are
15 constantly shedding skin cells. So the outer layers of our
16 skin are dead, dead cells, and those cells are constantly
17 rubbing off.

18 So depending on which dermatological report you
19 read, you'll see an average numbers of approximately 40,000
20 skin cells per hour is what humans on average tend to shed
21 from their body. Some people shed a little more. Those are
22 referred as good shedders. Some people shed a little bit
23 less. They're referred to as poor shedders.

24 I don't want to make it quite that -- it's not

1 actually quite that simple. You can be a good shedder on one
2 day and you can be a poor shedder on another day. It's not
3 like if you're a good shedder, you're always going to be a
4 good shedder. It can change.

5 Q. Can I stop you there?

6 A. Yes.

7 Q. You just said there were differences between good
8 day and bad day, what factors would you be looking at?

9 A. That's a very good question. Scientists have
10 looked at this. There is no clear explanation of exactly
11 what causes people to be a good shedder on one day and a bad
12 shedder on another day. It's thought to involve a number of
13 factors.

14 Some factors would include how much moisture is in
15 your skin, whether you used hand lotions, how recently or how
16 frequently you wash your hands. All of those are factors
17 that we believe can influence that. So there's no one easy
18 answer to say this is what causes the difference.

19 Q. A good shedder will shed how many cells in a day?

20 A. It's highly variable. But what we typically work
21 with are averages. And so the averages for humans are about
22 40,000 skin cells per hour.

23 Q. Per hour?

24 A. Right. So a good shedder would be a person

1 shedding more than 40,000 and a poor shedder would be a
2 person shedding less than 40,000 using that as the average.

3 Q. How many cells do you need to get a full sample, a
4 full profile?

5 A. A full DNA profile. It depends on the specific
6 chemistry, the specific DNA profiling kit you use. But using
7 the current generation of DNA profiling kits, typically 17 to
8 20 cells is what you need to get a full DNA profile. And
9 then five cells would get you a partial profile where you
10 wouldn't get the complete -- wouldn't get all their DNA
11 detected, but you would get a portion of the DNA detected.

12 Q. Without actually -- what would your guesstimate,
13 based on brief touch, of how many cells you would get in that
14 touch?

15 MR. LEE: Objection, speculative.

16 THE COURT: Sustained. Ask another question.

17 BY MR. FUSS:

18 Q. Based on the reports you've reviewed, how easy --
19 strike that. Whose van Oorshot?

20 A. Van Oorshot?

21 Q. Van Oorshot.

22 A. Van Oorshot is a scientist with the Victoria
23 Police Department, I believe in Australia, and he is a
24 forensic scientist who publishes extensively on touch type

1 DNA analysis.

2 Q. And what does the literature regarding touch DNA
3 specific to him have to do with a particular experiment
4 involving three people, a table -- a table, three chairs,
5 three glasses and a pitcher?

6 A. So there was a study that was done, it's one of
7 the more recent studies that was done on touch type DNA
8 analysis. In this study, they took three research volunteers
9 who were not told any information about why they were -- what
10 they were doing, what the focus of the study was. They
11 didn't know they were doing a touch type DNA study.

12 They were brought into a room where there were
13 three chairs in front of each other -- three chairs around a
14 table. On the table, there was a glass, a clean glass in
15 front of each of the chairs, and in the center of the table,
16 there was a jug of juice.

17 And the volunteers were told to go and sit down.
18 They weren't told which chair to sit in. So they got to pick
19 out their own chair. All the surfaces had been cleaned and
20 tested to show they didn't contain DNA before the experiment
21 started.

22 The three individuals sat down and for 20 minutes
23 were asked to engage in just daily conversation, talk about
24 anything you want. And after the experiment was completed,

1 they, the volunteers, then left the room and the researchers
2 returned to the room to swab the arms of the chairs, the
3 table surface in front of each person, the glasses and the
4 jug.

5 And what they were looking for was an indication
6 of whether or not any touching of those objects resulted in
7 the transfer of DNA to those things. They were also
8 interested in whether DNA, for example, from one person
9 sitting across the table would somehow indirectly get on to
10 the glass or the chair or the hands of the other person
11 sitting across the table. So that would be called indirect
12 transfer.

13 Now, it makes this particular study a really
14 exceptionally good study is that it's -- it's very real
15 world. So it's not a laboratory, you know, tightly
16 controlled study where everyone washes their hands first and
17 you're specifically looking at the grabbing of a test tube or
18 something, but rather it's real world.

19 The people came in and their hand were as clean or
20 as dirty as they were when they came in and the scientists
21 could then get a feel for what real world situations might
22 produce in terms of touch type DNA.

23 The most important thing this study did was they
24 videotaped the entire interaction during the entire

1 20 minutes. So they know who touched what for how long and
2 what order. So if you find that person B's DNA is on person
3 A's glass, you can go back to the videotape and you can say,
4 all right, did person B ever touch or pick up person A's
5 glass? If they didn't, then how would their DNA have gotten
6 there? It would have gotten there through some type of
7 indirect transfer.

8 So person B touches the jug handle, and then
9 person A touches the jug handle, picks up person B's DNA.
10 Person A picks up person A's glass and puts person B's DNA on
11 to his own glass. They could tell that by reviewing the
12 videotape.

13 And so that study gives us an understanding of how
14 easy or hard is it to pick up to develop DNA profiles from
15 touch DNA and it also tells us how often can we expect to see
16 indirect transfers of DNA.

17 Q. In this particular case, what is the equipment,
18 the testing kit used in this particular case regarding the
19 DNA?

20 A. So they used a kit called Global Filer, I believe.

21 Q. And describe what that is.

22 A. So Global Filer is the most recent generation of
23 DNA profiling kits. So these type of DNA profiling kits have
24 been around for about 20 years now and the kits that were

1 developed in the late 1990s, early 2000s, those kits have all
2 been retired. They had very low levels of sensitivity. They
3 couldn't detect -- they had a difficult time detecting touch
4 type DNA.

5 The kits that were introduced in the mid 2000s
6 were better at detecting touch DNA, touch type DNA, and
7 better at detecting the transfer. And the current generation
8 of kits and testing methods is even better at detecting this.

9 Q. What is AmpFLSTR Y Filer PCR amplification kit?
10 What is that?

11 A. So AmpFLSTR is the company, the commercial name of
12 a line of DNA profiling kits. The AmpFLSTR Y Filer is a
13 specific DNA profiling kit within that line of products. And
14 that particular product is a male specific test.

15 So it is a DNA profiling kit that is only able to
16 detect male DNA and it does that by amplifying DNA using a
17 technology called PCR. PCR stands for preliminary chain
18 reaction. It's a method of like taking a small amount of DNA
19 and copying it billions of times so you have a lot of copies
20 that you can then detect. And so the AmpFLSTR Y Filer kit
21 amplifies DNA, makes copies of DNA from the Y chromosome.

22 Females have two X chromosomes and males have an X
23 chromosome and a Y chromosome. So by focusing on just the Y
24 chromosome, you can selectively amplify and detect just male

1 DNA regardless of whether there's female DNA present at the
2 same time.

3 Q. And what is a locus for a loci?

4 A. So locus is singular and loci are plural. These
5 are points of comparison. So when we look at your DNA, we
6 don't just look at one spot to compare two DNA samples. We
7 can look at multiple spots. That is called a locus if it's
8 just one and loci if it's more than one. It's just a
9 location on a chromosome. And it's a location you can
10 compare between people. So it's points of comparison.

11 Q. Again, when you talked about amplification, it can
12 amplify it how many -- to what degree?

13 A. So it depends upon the number -- the length of
14 time and the number of repetitious cycles of replication.
15 Typically, you can start off with one molecule and you can
16 end up with more than a billion copies of that one molecule
17 in the course of doing this PCR process. So it's a huge
18 amount of amplification.

19 Q. And what does that help you to look for?

20 A. So that allows you to detect even microscopic
21 quantities of DNA. So you would never on a touch type DNA
22 sample, like our fingers touching, with that very casual
23 touch, research studies suggest that we're looking, perhaps,
24 at anything from 20 to a few hundred cells worth of DNA that

1 would be transferred. So that's a very small amount. You
2 wouldn't be able to see it with the naked eye. You would
3 probably have a difficult time seeing it with a microscope.

4 What the DNA amplification process does is it
5 takes that 20 to a few hundred DNA molecules and it amplifies
6 them into billions and billions and billions of copies. Now,
7 with billions of copies, now we can easily detect that DNA
8 and that's how the instruments that the lab uses generates a
9 DNA profile.

10 Before this technology existed, if you were
11 looking at blood, you would need a spot a blood about the
12 size of a nickel to get a DNA profile. With this technology
13 now, if you touch something, then you have a very good chance
14 of detecting a DNA profile from that. So it's increased
15 sensitivity.

16 Q. What in your business is the term peaks? What
17 does that mean?

18 A. So when we develop a DNA profile, the readout that
19 we get from the instrument looks like a flat line, and then
20 whenever the instrument detects DNA, the instrument will
21 create what looks like a spike or a peak. It's very narrow
22 almost like mountain like peak.

23 And based on the size of that peak, based on the
24 time that that peak is detected by the instrument, that is

1 how we can develop or identify your DNA profile. And so if
2 your DNA profile has all the same peaks as the DNA profile
3 developed from evidence, then that means that you could be a
4 potential contributor to that evidence.

5 Then we -- once we determine that you're a
6 potential contributor, then we would have to determine, all
7 right, what is the chance that a person at random just picked
8 up off the street would also potentially match? Now, if it's
9 one out of two people, then you might think that's not a very
10 persuasive match. If it's one out of an octillion people,
11 that may be more persuasive to you.

12 Q. What does the term mixture of DNA mean?

13 A. So a DNA mixture is when we analyze the sample and
14 we can see that the amount of DNA in the sample, the number
15 of different peaks that we see, is more peaks than you could
16 get from just one person.

17 So if two people touch a surface or if you get
18 blood from two people mixed together, any time you have DNA
19 from two people, then that will give you more peaks when you
20 do the DNA analysis. So that would be a mixture.

21 When we look at mixtures, we describe them in the
22 terms of the minimum number of possible contributors. You
23 will usually see a DNA mixture was developed and this mixture
24 consists of at least two people or at least four people or at

1 least ten people. It at least tells us that at a minimum,
2 there are four people. There could be more.

3 Q. Taking you back, briefly, after that explanation
4 to the van Oorshot paper, they were dealing with what you
5 described as mixtures from the people in that study, correct?

6 A. Yes. In that study, they were interested first in
7 determining from touched objects how likely is it that you're
8 going to get a DNA profile. Then -- that was their first or
9 one of their first goals.

10 The second goal was to determine how often did you
11 find indirectly transferred DNA? So how often did the person
12 B's DNA show up on person A's, like his chair or his drink
13 glass, that person being never touched.

14 And then the third thing, was how often did you
15 find background DNA, that is, did you find any cases where
16 DNA from none of the people in the room, so completely
17 unknown people, how often did that show up? And that's of
18 concern, because in addition to carrying your own DNA on your
19 body, you may also carry DNA from other people.

20 Q. When you are looking at a mixture and you're
21 trying to determine the sources of the mixture, what are you
22 trying to do?

23 A. So when you have a mixture, the DNA in a mixture
24 is all mixed together. So the goal in many cases is to try

1 to determine who are the individual people that are in the
2 mixture. And there are a couple of ways that this can be
3 done. The easiest way for this to be done is if the mixture
4 consists of a major contributor and a minor contributor.

5 So, for example, if I had a deposit here of fresh
6 blood, visible spot of fresh blood here --

7 Q. Let me stop you there for the record. You were
8 pointing to what is the --

9 THE COURT: May I suggest we get more to the heart
10 of the matter?

11 BY MR. FUSS:

12 Q. May I have him, just for the record, just -- you
13 touched in front of the wooden railing and you were referring
14 to blood there?

15 A. So --

16 Q. Let me stop you there. Thank you, doctor.

17 A. Yes.

18 Q. Regarding your opinions regarding the -- in the
19 serological testing in the State of Nevada v. Osbaldo
20 Chaparro, what are your opinions? What are they based on?

21 A. My opinions in this case are based on the results
22 of testing by the Washoe County Crime Lab.

23 Q. Explain in further detail -- if you would come
24 down here and describe what -- strike that -- in more detail

1 what did the Washoe County Crime Lab find?

2 A. Do you want me to do that down there?

3 Q. From there right now.

4 A. Okay. So the Washoe County Crime Lab first
5 collected their DNA swabs. The DNA swabs, the first part of
6 the process is to cut those swabs and to extract from the
7 swabs the DNA that is there. They did that. And then the
8 first step after that is to measure how much DNA is in each
9 one of those samples.

10 So they measured that with a kit called a Plexor
11 HY. The HY will be important here. So the Plexor HY kit, it
12 doesn't give you a DNA profile. What it does is it just
13 measures how much DNA is in the sample. We need to know
14 that, because if we're going to get an interpretable result,
15 we have to use that information to determine how much DNA to
16 put into the test sample to get the profile.

17 So the H in Plexor HY stands for human. So the
18 first thing the kit does is it measures how much total human
19 DNA is in the sample. That means how much male DNA, how much
20 female DNA total is in the sample. Then the Y in Plexor HY
21 is the second part of the test and that test measures
22 specifically how much male DNA is in the sample.

23 So you do that test to determine if you even have
24 any detectible male DNA in the sample. If you have

1 detectible male DNA and you're investigating a case where a
2 male is suspected of committing the crime, then that tells
3 you, all right, the sample contains male DNA. Whose male
4 DNA, we don't know, but it contains male DNA.

5 Then you would take it to the next step, which is
6 the DNA profiling step, and that's where you would develop a
7 DNA profile. You would then compare that profile to the
8 suspect or the defendant to determine whether or not the two
9 profiles seemed to be consistent with each other, whether or
10 not they matched each other. So that is sort of how the
11 testing goes.

12 Now, if you did the first test and it said, oh, I
13 detect human DNA --

14 THE COURT: Doctor, I apologize for interrupting.
15 The question was: What did Washoe County Crime Lab do?

16 THE WITNESS: Yes, I'm describing what they did.

17 THE COURT: I apologize. You're wondering a bit
18 afield from that. If you would focus on the question and
19 please answer the question. Go ahead with another question.

20 THE WITNESS: Yes. I'll try my best.

21 BY MR. FUSS:

22 Q. Based on the -- if you'll come down here and
23 approach the easel. I'll hand you back a black marker. What
24 were the results found in the testing of the items you listed

1 here regarding first the right hand?

2 A. Okay. So they did the DNA quantification test,
3 this Plexor HY, to look for human DNA. And in this test,
4 they detected no male DNA. So no male DNA was detected.

5 Because they're interested in a male perpetrator,
6 then, and there's no male DNA was detected, testing stopped
7 at this point. They did not go forward to DNA profiling. So
8 no male detected there. Left hand fingernail swabs, same
9 result, no male DNA detected.

10 So, again, because these are Lindsey's fingernail
11 swabs and they're looking for evidence that her hands had
12 direct physical contact with Osbaldo, no male DNA detected,
13 testing stops.

14 Then they went to the vaginal swabs. No male DNA
15 detected on the vaginal swabs. So, again, no male DNA
16 detected, you're not going forward to do any DNA testing.

17 The vulva swab is next. No male DNA was detected
18 on the vulva swab. So the sample for the same reason also
19 stops.

20 Then they got to the A1 black tights and here the
21 male DNA was detected. So in this case, this sample is the
22 one sample they then went forward to the next step, which was
23 the YSTR or called the Y filer test. And when they did the
24 why filer test, the Y filer test indicated that there was at

1 least DNA from four different unknown males. And because of
2 the -- because the nature of the mixture, meaning all very
3 low level mixtures, no conclusions.

4 Q. You may have a seat. When you talk about the
5 mixture found in the tights and they talk about no
6 conclusions can be drawn, what are your opinions of that
7 particular finding?

8 A. I've looked at the profile and the profile does
9 consist of at least four different males. None of the males
10 appears to have contribute any more DNA than any of the other
11 males, which means I can't pick out a single male. So I
12 would concur that no conclusions can be drawn from this
13 particular sample.

14 Q. All right. Have you been able to somewhat follow
15 the testimony in this case regarding what would be called in
16 our jurisdiction a SART nurse, a sexual assault nurse?

17 A. Yes. I was provided with some preliminary hearing
18 transcripts of her testimony. So I looked at those.

19 Q. Who was that person?

20 A. That was Ms. Robison, I believe.

21 Q. And she made some statements during her testimony
22 regarding the vaginal area and DNA. What opinions of hers do
23 you agree with, what opinions of hers do you disagree and
24 explain, please?

1 A. So in her testimony, she testified about two
2 different things. One was the collection of samples of
3 the -- collection of samples for a sexual assault kit. She
4 discussed some of the anatomy of the vagina and her role in
5 that process.

6 She also gave some of her opinions about webinars
7 that I believe she may have listened to and some opinions in
8 regard to DNA and how DNA is detected.

9 I myself am not a sexual assault nurse examiner,
10 so I'm not going to get out of my wheelhouse and testify
11 about her opinions regarding sex assault testing. I can,
12 however, opine on her testimony with regard to DNA analysis.

13 Q. And what is your opinion?

14 A. So I think that what she told you about DNA
15 analysis -- what she told you may be true in general with
16 regard to some DNA analysis, but it was not true with respect
17 to the DNA analysis in this specific case.

18 For example, she mentioned, I think, somewhere
19 around page 13 or 14 of her testimony, she mentioned that
20 it's very difficult to detect trace DNA on, for example, the
21 vulva swab or the vaginal swab. And she said it was
22 difficult, because if you are swabbing the vulva, that's made
23 of female's DNA and there's so much female DNA there that a
24 little -- a tiny bit of trace DNA from the male would not be

1 detected, because there would be all of that female DNA that
2 would swamp it out or I think she used the word that it would
3 dilute it.

4 Now, that would be true, that is true, if the
5 testing that you're doing is generic human testing. So if
6 you were to use the Global Filer kit that we've talked about
7 that detects male and female DNA, if you have an abundance of
8 female DNA, you will not be able to detect the male DNA.

9 But that kit wasn't used in this case. This case
10 used the Y Filer kit. Y Filer is a male specific kit. So
11 that kit doesn't even see the female DNA. It ignores it
12 completely. So the advantage of a Y Filer kit is that even
13 if you have a thousand or 2,000 times or more female DNA
14 rather than male DNA, the kit ignores all of that female DNA
15 and selectively pulls out just the male DNA from the Y
16 chromosome. So concerns about dilution or concerns about
17 excess female DNA simply don't apply in this case.

18 The second thing that she talked about was she
19 talked about urine I believe completely washing away the DNA.
20 And, again, it's true that if you were looking at the
21 external genitalia, urination and wiping will reduce the
22 amount of DNA. With repeated urination and repeated wiping,
23 it's certainly possible you could wipe away all of the DNA.

24 But at the same time, you have to recognize that

1 if the result is no DNA was detected, then saying that it was
2 there and it wiped away is speculative. Saying that it was
3 never there in the first place, that by itself could be
4 speculative. If you have a negative result, you just have a
5 negative result. You can make up theories about why it might
6 be negative, but it's just a negative result.

7 However, that may affect the external genitalia.
8 In the case of digital penetration, you would still expect
9 that you could detect DNA from digital penetration on the
10 vaginal vault. And there have been a number of studies that
11 have looked at digital penetration showing you can detect it
12 up to about 72 hours after digital penetration occurs.

13 She also made some statements about a webinar that
14 she had seen from 2014 and she made some statements about
15 touch DNA requiring, I think, 30 seconds before you would be
16 able to detect it.

17 So I did obtain a copy of the webinar. I went
18 through the webinar. She ascribed that to a study done by
19 Dr. Green. Dr. Green is a medical director of a forensic
20 nurse education cite in California.

21 The studies were actually not done by Dr. Green.
22 They were some studies done by graduate students as part of
23 graduate student projects. And while, you know, I teach
24 graduate students myself, I know that it's much better to

1 rely upon peer reviewed published literature.

2 The peer reviewed published literature says
3 nothing about a minimum of 30 seconds being needed for touch
4 DNA. In fact, scientists have looked at touch from one
5 second on up to several minutes. And what that shows is that
6 when DNA transfer takes place from touch, that time is really
7 not an important factor. That the transfer of DNA occurs
8 almost instantaneously when you touch.

9 . So if you continue touching, the DNA has already
10 transferred during the initial touch. Waiting a longer time
11 is not going to result in significantly more DNA being
12 deposited.

13 What we know does result in more DNA being
14 deposited is if there's some friction, if there's some
15 rubbing or if there's some movement, that will increase the
16 amount of DNA.

17 I think she was looking at some student projects.
18 I did look at the specific student project that she -- that
19 this notion that time was important where that statement came
20 from. And on that particular student project, and
21 understand, these are grad students, so, you know, they're
22 new at this, the student drew that conclusion that time
23 mattered by comparing two different experiments.

24 In one experiment, I think it was five seconds of

1 contact with no movement. And in the second experiment, it
2 was I want to say 20 or 30 seconds of contact with friction.
3 And from that, the student concluded that time mattered.

4 Now, in fact, that experiment, there are two
5 different things going on. There's a change in time and
6 there's the added friction. Scientists that have actually
7 done experiments to separate those, just time versus
8 friction, have reported that time is not the factor involved,
9 that it's actually the friction.

10 Q. Let's talk about friction as it applies to this
11 case.

12 A. Yes.

13 Q. You've seen the video?

14 A. Yes.

15 Q. You've reviewed Lindsey's testimony?

16 A. Yes, I have.

17 Q. Do you recall what in essence her testimony was
18 regarding the contact between her and Mr. Chaparro?

19 A. Yes. So the contact, she said that he pushed his
20 hand under her tights --

21 MR. LEE: Objection, hearsay.

22 THE COURT: Do you want to respond?

23 MR. FUSS: As an expert, he's allowed to rely on
24 everything.

1 THE COURT: Hang on. I know where you're going.
2 He can, of course, rely on other things. They still must be
3 admissible for him to testify about them. I sustain a
4 hearsay objection.

5 MR. FUSS: I would argue that it is not hearsay.
6 The testimony has been?

7 THE COURT: Mr. Fuss, give me a legal grounds.

8 MR. FUSS: It is not offered for the truth of the
9 matter.

10 THE COURT: If it's not offered for the truth,
11 it's not relevant.

12 MR. FUSS: All right.

13 BY MR. FUSS:

14 Q. Tell me about friction. If you had bare skin and
15 tights or pantyhose and you had contact between bare skin
16 separate -- somebody's else's hand and pantyhose?

17 A. What we know from studies of touch type DNA is
18 that if you compare static touch, meaning just still touch,
19 touch and don't move, that deposits DNA.

20 If you put pressure, that deposits DNA. It's not
21 clear that pressure deposits any significantly more DNA than
22 just casual touch by itself. But we do know that if there is
23 any motion, so rubbing, whenever two things rub together,
24 whether it's a hand and pantyhose, skin on skin, skin on

1 plastic, anything that rubs together, that significantly
2 increases the transfer of DNA.

3 So it increases the amount of DNA that is
4 transferred. The literature suggests that on average, it
5 increases the transfer by about 17 times.

6 MR. FUSS: I'll tendered the witness.

7 THE COURT: Thank you. Cross examination.

8 CROSS EXAMINATION

9 BY MR. LEE:

10 Q. Dr. Danielson, good afternoon.

11 A. Good afternoon.

12 Q. You and I have not had the pleasure of meeting
13 before, correct?

14 A. I've been to Nevada a few times. I can't say your
15 face is very familiar, but we may have met.

16 Q. The bald head?

17 A. So does Steve, though.

18 Q. Dr. Danielson, you would agree with me that in
19 2015 a federal court judge found your credibility was
20 significantly undermined in case you testified in?

21 A. Yes. That was the Dickson case. I had testified
22 that a laboratory, an accredited laboratory was using --

23 THE COURT: Doctor.

24 THE WITNESS: -- methods and the judge disagreed.

1 THE COURT: Doctor, I'm sorry, when I speak you
2 don't.

3 THE WITNESS: Okay.

4 THE COURT: The question was a straightforward
5 simple one and you answered it when you said yes. Please, if
6 you would, pay attention to the question and just answer the
7 question. Go ahead, Mr. Lee.

8 BY MR. LEE:

9 Q. You've read that Dickson order, correct?

10 A. Yes, I have.

11 Q. Then you know that the judge found your testimony
12 troubling, quote?

13 A. Yes, that was his opinion.

14 Q. At the time when you -- the order came out in
15 2015, right?

16 A. Yes, I believe it did.

17 Q. Did I believe your testimony was 2013, 2014?

18 A. Yes, that's correct.

19 Q. At that time, you were working with NMS Labs, is
20 that correct?

21 A. Yes, that's correct.

22 Q. You were an advisor?

23 A. Yes.

24 Q. A science advisor?

1 A. Yes, that's correct.

2 Q. And so you worked for an NMS Labs?

3 A. Well, I was an independent consultant. So I was
4 an at will consultant for NMS Labs. I wasn't a -- I was paid
5 by the hour for consulting work that I did for them. I
6 wasn't a salaried employee.

7 Q. In a previous case in Washoe County in 2015, the
8 Ramirez case, do you recall that?

9 A. Yes.

10 Q. You testified that you were -- NMS was a criminal
11 case working lab that I work for?

12 A. That is correct.

13 Q. So in that capacity you just described?

14 A. Yes, that's correct.

15 Q. In fact, you even wrote their interpretation
16 guidelines?

17 A. Yes.

18 Q. Again, going back to the Dickson decision, that
19 was a rape case, right, in Washington, D.C.?

20 A. Yes, that's correct.

21 Q. Further, Judge Herbert Dickson found, quote --
22 excuse me -- found that your conclusions, quote, to be
23 scientifically unreliable, correct?

24 A. That was his opinion.

1 Q. And, quote, misleading?

2 A. That was his opinion.

3 Q. That's what it said, though?

4 A. Yes.

5 Q. Judge further found in a written opinion that your
6 report did not, quote, accurately capture the substance of
7 the conclusions rendered.

8 A. That was his opinion, yes.

9 Q. And, in fact, the judge went on, your position in
10 your testimony was found to be, quote, incomprehensible and
11 out of step with accepted principles within the DNA field?

12 A. That was his opinion, yes.

13 Q. He's the judge, right?

14 A. Yes. So he's entitled to issue that opinion.

15 Q. What is the scientific working group for DNA
16 analysis methods?

17 A. Scientific working group for DNA methods is a FBI
18 organized group of scientists that put out guidelines or
19 recommendations for the forensic community.

20 Q. Those recommendations and guidelines, are they
21 important to what you do?

22 A. Yes, I think they are.

23 Q. And to any DNA analyst?

24 A. Well, yes, they help -- they as well as the OSEF

1 guidelines help to -- actually, OSEF standards, help to guide
2 laboratories in good science.

3 Q. Again, back in 2015, Judge Herbert Dickson, a
4 Federal Court Judge in Washington, D.C., found your
5 interpretation of those guidelines was found to be, quote,
6 inconsistent with the manner that members of the scientific
7 working group for DNA analysis methods found themselves and
8 the vast majority of laboratories in the United States
9 interpret the guidelines and practice DNA interpretation?

10 A. That was his opinion.

11 Q. In fact, you were precluded from testifying
12 further in that case, correct?

13 A. No. In that case, I contacted NMS Labs and
14 suggested that they clarify the wording in their reports so
15 that the uncertainty that I testified to in court, I
16 testified the testing was uncertain, so that uncertainty was
17 better reflected in the case and the prosecution had
18 requested retesting.

19 So I advised the defense to retest. They filed a
20 motion to retest. But then the prosecution opposed
21 retesting. So at that point, no further testing was done and
22 I never -- I didn't need to testify any further.

23 Q. You're aware of what the Texas Forensic Science
24 Commission is?

1 A. Yes, I am.

2 Q. What is that?

3 A. That's the commission that the government's
4 witness from the Dickson case is a member of.

5 Q. Is that the only thing about the commission? I'm
6 asking, what is that commission?

7 A. They are a commission that audits laboratories in
8 Texas or laboratories that do testing for the State of Texas.

9 Q. You're aware that Texas law actually forbids
10 forensic analysis from being admitted in criminal cases if
11 the entity conducting the analysis is not accredited by this
12 commission, right?

13 A. I'm not familiar with the specifics of Texas law
14 with regard to the commission.

15 Q. Have you read the Texas Forensic Science
16 Commission from 2018 about your testimony in U.S. versus
17 Cardell Torney?

18 A. Yes. I was provided with a copy of that. They
19 apparently had written a report. They didn't talk to me
20 about that report. But I did read the report afterwards.

21 Q. You did read it?

22 A. Yes.

23 MR. LEE: If I may have an item marked, please?

24 THE CLERK: Exhibit 25 marked for identification.

1 BY MR. LEE:

2 Q. I'm going to hand you what has been marked as
3 Exhibit 25.

4 A. Yes.

5 Q. Is that the report?

6 A. Looks like it, yes.

7 Q. And if you want, feel free to thumb through it if
8 you want to verify that. Just make sure you're confident
9 that's the actual report we're talking about.

10 A. I want to make sure. I'm listed on one page of
11 the report and I want to make sure that page is there. Yes.

12 Q. I'm sorry. Did you say you're listed only on one
13 page of that report?

14 A. Yes. So I'm -- the report in regard to me is
15 section D, testimony of Dr. Phillip Danielson. That's the
16 section that pertains to my role in the case.

17 Q. We'll get to that in a moment.

18 A. Okay.

19 Q. You're confident that's the report?

20 A. Yes.

21 Q. So when I asked you a question before about Texas
22 law, and you said, I believe, you don't know what Texas law
23 requires, right?

24 A. With regard to the role of this commission in

1 admissibility in court, no, to the best of my knowledge, I
2 thought the judges were the gatekeepers for admissibility.

3 Q. If you look at page four, page four of that
4 report, though, states what the law is about that, in that an
5 expert is not allowed to testify unless they're accredited by
6 this Texas Forensic Science Commission.

7 MR. FUSS: Objection, relevance as to this case.

8 THE COURT: You want to respond?

9 MR. LEE: It is very relevant to his credibility,
10 your Honor.

11 THE COURT: It is clearly impeachment. I
12 overrule. That means you can ask the question, and, doctor,
13 you can answer.

14 BY MR. LEE:

15 Q. Thank you.

16 A. So, yes, it does -- on page four, it does say that
17 the Texas Court of Criminal Procedure prohibits forensic
18 analysis from being admitted in criminal cases if the entity
19 conducting is not accredited by the commission. Okay.

20 Q. And then this report, this two or so page report
21 deals specifically with the decision in U.S. v. Torney,
22 correct?

23 A. I believe it does.

24 Q. Including your testimony?

1 A. Yes.

2 Q. And then besides Judge Herbert Dickson, who we've
3 talked about already, didn't the Texas commission also find
4 things troubling with your testimony?

5 A. Well, the Texas commission, my understanding is
6 that they looked at the transcripts from my testimony and
7 they issued their interpretation of those transcripts. They
8 didn't talk to me about the transcripts. They just issued
9 their report.

10 Q. But the Texas Forensic Science Commission still
11 found troubles or issues with your testimony, right?

12 A. Yes, that was their opinion.

13 Q. In fact, on page 15 of that report specific to
14 you, they noted that your testimony as to exclusion or
15 inclusion was problematic?

16 A. Yes, which is actually quite puzzling, since that
17 definition is what we all use now.

18 Q. But at the time, you had said there was no clear
19 definition?

20 A. Well, at the time, I explained what the definition
21 of exclusion meant. It's actually written, NMS Labs when
22 they issue their reports and they say someone is excluded,
23 that comes with an addendum, which specifically explains what
24 an exclusion means and that's what I testified about.

1 Q. Didn't the Texas commission, though, find that
2 that was misleading, because you testified that exclusion can
3 actually mean inclusion?

4 A. No. That's not what I testified to and that's
5 what is troubling. If you go back to the court transcript
6 itself, what I said specifically was not that exclusion meant
7 inclusion. What I said is that exclusion as written in NMS's
8 reports, an exclusion means either the person's DNA is not
9 there, person never touched it, never had any contact, their
10 DNA is not there, or there is less than a detectible amount
11 of that person's DNA. Because forensic kits all have levels
12 of sensitivity.

13 So I testified that basically an exclusion cannot
14 be absolute. And, in fact, more recent documents by the FBI
15 confirm that. That's what I actually -- if you go back to
16 the court transcript, not this report, to the transcript
17 itself, it's very clear what I said.

18 Q. So, doctor, I let you kind of go off a little bit.
19 Let me go back to my original question: From that report,
20 the Texas Forensic Science Commission found that your
21 testimony as to exclusion and inclusion was troubling?

22 A. That was their opinion, though I don't think it's
23 reflected in the transcript.

24 Q. And you also had testified that there was not an

1 industry wide definition as to what included or excluded
2 means?

3 A. That is correct. There is no national standard.
4 Even to this day, there's no national standard to define that
5 term.

6 Q. But, in fact, again, noted in that report, that
7 scientific working group for DNA analysis methods noted that
8 there is, they do define those?

9 A. The definition, first of all --

10 Q. Is that correct?

11 A. Not exactly. It's not that simple.

12 Q. So SWGDAM does not define inclusion or exclusion?

13 A. SWGDAM defines inclusion and exclusion, but that
14 definition that they give is applicable to single source
15 samples where there is no allele dropout. So it's a
16 definition, but I applies to a very specific type of sample,
17 which didn't apply in the Torney case.

18 Q. The Texas commission also found issues concerning
19 your methods of setting analytical threshold?

20 A. Yes. I had advocated for an analytical threshold
21 of 40 RFU.

22 Q. And you testified that there's one way to do it
23 and it's two times the peak to trough ratio?

24 A. I didn't testify there was one way to do it. I

1 testified that the way that it was -- the way to do it as
2 listed in the SWGDAM document was two times peak to trough.

3 Q. However, SWGDAM gives other reasons, other methods
4 of validating that as well, correct?

5 A. No, they don't. SWGDAM guidelines says that
6 multiple methods exist and in them the only example that they
7 give is two times peak to trough.

8 Q. And so that's partly what the commission had
9 trouble with, with your testimony, correct?

10 A. No.

11 Q. That you had testified only that the example says
12 this, but to the exclusion to the other methods.

13 THE COURT: Mr. Lee, if I may, we're not going to
14 have a trial, within a trial, within the trial, about what
15 the Texas commission said. Perhaps you would like to, if
16 there are any other findings that you think are relevant, you
17 would like to ask the doctor about that. But I might suggest
18 a debate between you and he about what he said in Texas some
19 years ago has little meaning here.

20 MR. LEE: Thank you. I have one more point to
21 make on that.

22 BY MR. LEE:

23 Q. After this, you were no longer working for or
24 employed by NMS Laboratories, correct, after this testimony

1 in the Torney decision?

2 A. Well, the Torney was in 2013. I left NMS Labs in
3 2018, I believe, and that was unrelated to the Torney case.
4 I left NMS Labs, because I was hired as a consultant.

5 THE COURT: Doctor, I'm so sorry. The question
6 wasn't why did you leave. The question was, did you leave?
7 I believe the answer is yes.

8 THE WITNESS: Yes, I left in 2018.

9 BY MR. LEE:

10 Q. Wasn't that corrective action on the part of NMS
11 that you would no longer work there?

12 A. No, it was not.

13 Q. So if the report, the Texas commission report at
14 page 19 notes, corrective action by NMS, amongst them, is
15 that, quote, NMS modified its management structure and
16 oversight of the DNA laboratory and that Dr. Danielson is no
17 longer a consultant.

18 MR. FUSS: I'm going to object as to foundation as
19 to what that report basis that relationship on.

20 THE COURT: I'm going to overrule a foundation
21 objection. This is confrontation for purposes of
22 impeachment. The doctor can confirm it or not. Again, we're
23 not going to have a trial within a trial about whether or not
24 whatever his testimony is is accurate. I overrule. That

1 means you can ask the question and you can answer.

2 BY MR. LEE:

3 Q. Do you need me to ask it again, doctor?

4 A. No. I mean, I have the email from NMS when I left
5 the company and it had nothing to do with Torney. I had --
6 so I don't know where they -- nothing in this report, there's
7 no letter in this report, there's nothing, there's no
8 corrective action at NMS Labs, because those are written
9 down, which says that I don't work there because of Torney.
10 If you want to know why I don't work there, I'll be happy to
11 tell you.

12 Q. Thank you. My question was simply: Doesn't the
13 report note that the corrective action taken by NMS included
14 modifying management structure and that you are no longer a
15 consultant?

16 A. That is what's written in the report. I'm not
17 sure where that comes from, though.

18 Q. You were not an accredited analyst in the State of
19 Texas, correct?

20 A. No. First of all, analysts aren't accredited, but
21 the answer is no.

22 Q. When I say accredited, I mean by the Texas
23 Forensic Science Commission. They do have to accredited,
24 correct, any analyst who testifies within the state?

1 A. No. Accreditation doesn't apply to analysts.
2 Laboratories are accredited. Analysts are not accredited.
3 Analysts are proficiency tested.

4 Q. But wouldn't you agree that the science commission
5 notes individual names of who can testify who are associated
6 with a given entity such as NMS Labs?

7 A. But you asked about accreditation. Laboratories
8 are accredited.

9 Q. Exactly.

10 A. Right.

11 Q. You were not listed as a person who is able to
12 testify right now as a forensic science analyst in the State
13 of Texas?

14 A. I don't work for an accredited laboratory, so of
15 course I wouldn't testify in Texas, because I don't work for
16 an accredited laboratory. It has nothing to do with me. It
17 has to do with the company you work for.

18 Q. Let's go on to the accreditation, then. You tell
19 us your laboratory is not accredited?

20 A. No. Accreditation is for testing and calibration
21 laboratories. I don't work in a testing and calibration
22 laboratory.

23 Q. You work in an academic laboratory?

24 A. Yes, research laboratory.

1 Q. Research laboratory. You have since the beginning
2 of your interest in your career into this type of field,
3 right?

4 A. I worked in a research laboratory for a number of
5 decades. In forensics in particular, since about 2000.

6 Q. And you've never tested an actual piece of DNA
7 evidence from beginning to end?

8 A. Yes, I have. That was in the early 2000s with a
9 new mitochondrial DNA analysis method, but I don't routinely
10 work in case work.

11 Q. Sir, do you recall, again, testifying in Washoe
12 County in the Robert Jason Ramirez case back in 2017?

13 A. Yes, I do.

14 Q. Do you recall stating that, I haven't tested any
15 actual DNA evidence in our laboratory.

16 A. I would have had to have qualified that. I did
17 test evidence in the early 2000s. I did not -- I think, if
18 I'm not mistaken, if I remember correctly, the question had
19 to do with testing from collection through testimony in
20 court. That the answer is, no, I haven't. The cases that
21 I've tested --

22 THE COURT: Doctor, the question was, if I may:
23 Do you recall stating that haven't tested any actual DNA
24 evidence in our laboratory? Do you recall?

1 THE WITNESS: If it's in the transcript, then I
2 must have testified to it. I'm trying to understand the
3 context of which it was asked.

4 THE COURT: Mr. Lee.

5 BY MR. LEE:

6 Q. Would it refresh your recollection to see it?

7 A. Sure.

8 MR. LEE: May I have another item marked?

9 THE CLERK: Exhibit 55 marked for identification.

10 BY MR. LEE:

11 Q. Page 79, Exhibit 55, starting at line 17, was the
12 question followed directly by your answer.

13 A. All right. So the context of this question --

14 THE COURT: Stop talking.

15 THE WITNESS: Yes.

16 BY MR. LEE:

17 Q. Did that refresh your recollection?

18 A. Yes.

19 Q. Do you recall, then, the context and the question?

20 A. Yes, I do.

21 Q. And your answer?

22 A. Yes, I do.

23 Q. Please explain.

24 A. So in that particular case, we were testifying

1 about processing criminal evidence to generate the standard
2 DNA profiles that were being discussed in the Ramirez case.
3 And I have not tested any evidence using those methods for
4 chromosomal testing in my laboratory.

5 I did process cases, a couple of cases, early in
6 the 2000s. Those cases never actually went to me testifying
7 in court, so I couldn't testify that I had followed it from
8 collection all the way through court testimony.

9 Q. Okay. So is it accurate that the question is:
10 How many pieces of actual evidence have you tested as a DNA
11 analyst from beginning to end?

12 A. End means all the way to court, which usually is
13 what they're talking, then none.

14 THE COURT: Doctor, you'll have an opportunity to
15 explain context and all the things you want to volunteer --

16 MR. FUSS: Your Honor --

17 THE COURT: No -- on redirect. Please listen to
18 the question and just answer the question.

19 THE WITNESS: I'm trying, sir.

20 BY MR. LEE:

21 Q. My question was: Is that the question that was
22 asked to you?

23 A. Yes, I believe it is.

24 Q. Your answer was: I don't work at a crime lab. I

1 worked at university lab. Universities don't test evidence,
2 so I haven't tested any actual DNA evidence in our
3 laboratory?

4 A. Correct, given that context.

5 Q. Amongst your -- as part of your career, you teach
6 DNA strategies to public defenders, correct?

7 A. DNA strategies? I mean, I teach about DNA
8 analysis to public defenders and to District Attorneys.

9 Q. You ever testify for the State?

10 A. Have I testified for the State? I believe there
11 was one, I want to say there's one case, again, in the early
12 2000s where the State asked me to testify. And that was
13 regarding some paternity testing that was important to the
14 case, but typically not.

15 Q. I recall that. You testified by telephone, right?

16 A. Yes, that's correct.

17 Q. You didn't appear in person to do that?

18 A. That is correct. It was out-of-state.

19 Q. It was 20 years ago?

20 A. They wanted telephone. They said it would be fine
21 to testify by telephone.

22 Q. And that's the only time you've testified for the
23 prosecution?

24 A. Correct.

1 Q. Now, with touch DNA or however you further defined
2 it, what was the word you used?

3 A. Touch type or trace DNA. It's actually defined
4 that way in the literature.

5 Q. Thank you. Touch type DNA, it's very challenging
6 to interpret, right?

7 A. It can be.

8 Q. Challenging to get a full profile?

9 A. Depends on how much DNA was deposited. In some
10 cases, it can be. In other cases, not.

11 Q. If there's not DNA deposited, it can be
12 challenging?

13 A. It can be.

14 Q. So in many cases with, say, touch type evidence
15 where someone has just touched something, they often don't
16 leave behind enough DNA that we can get a full profile,
17 correct?

18 A. No. Actually, the literature suggests otherwise.

19 Q. You testified in Ramirez in Washoe County in 2017,
20 correct?

21 A. Yes.

22 Q. Do you recall saying, page 33, with touch type
23 evidence where someone has just touched something, they don't
24 leave behind enough DNA that we can get a full profile.

1 A. Yes. That was 2017?

2 Q. Yes.

3 A. So there are published studies on --

4 THE COURT: There is no question, doctor.

5 THE WITNESS: Yes.

6 THE COURT: Your next question.

7 BY MR. LEE:

8 Q. Did you say that?

9 A. Yes, I did.

10 Q. Do you disagree with what you said?

11 A. I would say that the science has advanced since
12 the testing was done in that case.

13 Q. Okay. Let's talk about some variables that affect
14 transfer of DNA.

15 A. Yes.

16 Q. You talk about shedder status, right?

17 A. Yes.

18 Q. I mean, that's a huge variable, correct?

19 A. Yes. It's considered to be a large variable.

20 Q. That research hasn't made really any much headway
21 yet, correct?

22 A. No. I mean, there have been a number of studies
23 published on it. I can tell you about it if you'd like.

24 Q. So what makes a good shedder versus a bad shedder

1 can depend on an innumerable amount of variables, correct?

2 A. That's correct.

3 Q. On one day, you may be a good shedder. The next
4 day, you may not?

5 A. There is some evidence to support the view that
6 the amount of shedding changes from day to day, but keep in
7 mind that all shedding means you're still, even poor shedders
8 are shedding a lot. Don't -- poor shedder is not synonymous
9 with no shedder.

10 Q. Okay. You mentioned before that an average person
11 sheds 40,000 skin cells a day?

12 A. Per hour.

13 Q. Per hour. From what part of the body?

14 A. From the entire body. Those are estimates from
15 dermatological studies.

16 Q. So not from the hands?

17 A. Includes the hands.

18 Q. Includes the hand, but 40,000 doesn't come from
19 the hands, it's the entire body?

20 A. Correct.

21 Q. I'm actually really curious, do you know from that
22 study how they get to the 40,000?

23 A. Typically numbers like that come from sampling and
24 sampling a portion of the body and then applying -- doing a

1 calculation to apply it to the full surface area of the body.

2 So sampling is a common method used in science.

3 Q. Dry versus oily, that's a variable affecting
4 transfer?

5 A. Yes, potentially.

6 Q. How about day versus night?

7 A. Possibly. I don't know. I'm not aware of any
8 studies that specifically looked at it that, but it would be
9 reasonable to expect that as you're moving you're going to
10 shed more than if you're asleep in bed.

11 Q. How about towards the end of the day? If I've
12 been up for 12 hours, am I going to shed more in the morning
13 versus the end of the day?

14 A. Again, I have not seen any large scale studies of
15 that.

16 Q. Washing affects?

17 A. Washing reduces the amount of DNA that is
18 available for deposit. It doesn't reduce it to zero. But if
19 you repeatedly wash your hands 5, 10, 15 times, you will see
20 a decrease in the amount of material that is shed.

21 Q. Only at 10 or 15 times?

22 A. I haven't gone back to the studies and look at how
23 many times they looked at, but I want to say I think they
24 looked at maybe up to 15 times.

1 Q. So help me out, is it your testimony that it takes
2 15 times to be able to reduce your shedder status?

3 A. No. If you shed a certain amount and then you
4 wash your hands and test again, then you'll shed less. If
5 you wash your hands again right away, then you'll shed a
6 little bit less. If you wash your hands again, you'll shed a
7 little bit less. But you're still shedding a lot, it's just
8 that the amount is slowly going down.

9 Q. Thank you for that.

10 A. All right.

11 Q. The surface type?

12 A. Yes.

13 Q. That affects?

14 A. Yes.

15 Q. In what way?

16 A. So surface types can be characterized as either
17 smooth or rough and they can be characterized as porous or
18 nonporous. Nonporous means they don't absorb liquids and
19 porous means that they're absorbant. So smooth, nonporous
20 surfaces like glass, plastic, these are the least efficient
21 surfaces for picking up DNA. And rougher, porous surfaces,
22 so things like cloth, are very good at picking up DNA.
23 Things like wood, which are somewhat smooth, but porous, are
24 intermediate.

1 Q. Wiping can affect the amount of another person's
2 DNA that may be in, say, the female genital area?

3 A. Correct.

4 Q. In fact, you've testified to that as well
5 previously in other jurisdictions, right?

6 A. Yes. Correct.

7 Q. You would expect some DNA would transfer from the
8 skin to the toilet paper?

9 A. Yes, that's possible.

10 Q. Do you expect it or is it possible?

11 A. I would say you would probably expect some
12 transfer to occur.

13 Q. Wiping could even add DNA, correct?

14 A. If there was DNA on the material used to wipe,
15 yes, you would -- it could be bidirectional. Some DNA would
16 be removed and then other DNA would be added.

17 Q. Now, you talked a little bit on direct examination
18 about direct versus indirect transfer, correct?

19 A. Yes.

20 Q. Now, quantity alone doesn't allow you to determine
21 anything direct versus indirect transfer?

22 A. That is correct.

23 Q. You need more information, is that correct?

24 A. Well, for some samples, you simply can't tell

1 whether it was direct or indirect.

2 Q. So therefore to make that determination, you need
3 more information?

4 A. For some samples, the nature of the sample is such
5 you simply can't tell. There's no other information that
6 we're aware that you could provide that would answer that
7 question.

8 Q. I'm sorry. My question was: You would need more
9 information? I believe you answered that.

10 A. What I said is that it's not necessarily. There
11 are samples where more information doesn't tell you anything
12 more. There is a whole paper published on this.

13 Q. I get that, doctor. Are you disagreeing, then,
14 with that, that quantity alone doesn't allow you to determine
15 if it was direct or indirect, you need more information?

16 A. Quantity alone -- so let's try to make this clear.
17 Quantity alone and quality of profile alone do not allow you
18 to make that determination. For some samples, more
19 information may help you. And for other samples, based on
20 what we currently know, there's no additional information
21 that would help us to answer that question.

22 So it's not a simple yes or no for every single
23 sample. For some samples, more information might actually
24 help us. In sex assault type samples, yes, serological

1 information can help us. But in touch type samples, then
2 serological information doesn't help us. So it depends on
3 the sample.

4 Q. I don't think we're understanding each other, so
5 I'm going to move on, doctor. You talked about the Plexor
6 Quantitative PCR?

7 A. Plexor HY, yes.

8 Q. It's made by Promega?

9 A. Yes.

10 Q. You're familiar with Promega? You've seen it?
11 You've used it?

12 A. Yes. I'm familiar with both Promega and PE
13 Biosystems.

14 Q. Promega puts out several different items, right?

15 A. Yes, that's correct.

16 Q. For quantitation?

17 A. For DNA quantification, as well as DNA profiling.

18 Q. Going back to that Texas commission, they found
19 that you misused the Promega amplification kit, right?

20 A. In the Texas commission case, I didn't do the test
21 in that case, so I didn't use Promega.

22 THE COURT: The question is not whether you agree.
23 The question is: Did they find that? Would you answer the
24 question, please?

1 THE WITNESS: Okay. Yes, they erroneously found
2 that.

3 BY MR. LEE:

4 Q. You talked about peer review. It's important in
5 your line of work, right?

6 A. Yes, it is.

7 Q. You came up with conclusions in this case
8 regarding Osbaldo Chaparro and the touching that was done
9 involving the case of Osbaldo Chaparro?

10 A. Yes. Correct.

11 Q. Your work was not peer reviewed?

12 A. No. Forensic lab reports for people that do
13 independent reviews of them, they're not peer reviewed. Peer
14 reviewed is for like journal articles, grants, things like
15 that.

16 Q. Didn't Mr. Gresko have his essentially peer
17 reviewed?

18 A. No. His lab reports undergo what's called an
19 administrative review and a technical review and that is not
20 synonymous with peer review.

21 Q. Did anyone review your work in this case in your
22 report?

23 A. No. I'm the one doing the review in this case.

24 Q. Okay.

1 MR. LEE: Excuse me one moment.

2 BY MR. LEE:

3 Q. At almost an hour ago, 10:20, you testified that
4 if you touch this table, I believe you pushed your finger on
5 the desk in front of you, that there's a good chance of
6 getting a DNA profile, is that accurate?

7 A. Yes, that's accurate.

8 Q. Getting a DNA profile from a touch is not
9 absolute?

10 A. No.

11 Q. So sometimes a touch would not transfer DNA or at
12 least a detectible amount, let's say?

13 A. Right. The literature suggests it's possible but
14 not likely.

15 Q. But you said it's a good chance of getting a DNA
16 profile?

17 A. Yes, that's correct. That's what studies
18 currently indicate.

19 Q. Okay. So you have watched the video of the
20 assault happen?

21 A. Yes, I have.

22 Q. When did you see that?

23 A. I first saw that video probably a couple of years
24 ago when I was out here to observe the testing when we got

1 the first results back from the testing. And then over the
2 past week, I've seen it again.

3 Q. I'm assuming two years ago or so was -- you were
4 shown by the defense counsel team?

5 A. Yes, Jaclyn Millsap, I believe, showed me the
6 video at that time.

7 Q. You see in that video that Lindsey and Mr.
8 Chaparro have contact?

9 A. Yes, they have contact. I can't see from the
10 video if it's skin on skin contact, but they're clearly
11 together in the video.

12 Q. Okay. His hand is on her?

13 A. Yes, at least on the exterior of her clothing.

14 Q. Her hand is on him?

15 A. Yes, I -- there's one part of the video where it
16 looks like she's pushing against his coat.

17 Q. Dr. Danielson, I appreciate your time. I'm almost
18 done, just a question or two more. You mentioned before
19 about swabbing the victim's back in this case, that maybe
20 that would have yielded something?

21 A. What I testified to was that if it's alleged that
22 there was skin contact that involved the upper back, that
23 would be a reasonable place to swab.

24 Q. That would be essentially to ID somebody, correct?

1 A. It's to detect an indication that a person has had
2 skin on skin contact.

3 Q. Do you know in this case where the pantyhose came
4 from?

5 A. The pantyhose came from Wal-Mart.

6 Q. When did you learn that?

7 A. I learned that when I read the transcripts from
8 Lindsey.

9 Q. Okay. And then, again, just about an hour ago, I
10 think at 10:22, I wrote down that you testified that we all
11 carry some DNA profiles of other people with us just due to
12 indirect transfer, is that correct?

13 A. That's what literature suggests. Studies of
14 people, background DNA on their body, suggest that it's quite
15 common to find DNA from nonself DNA on your body.

16 Q. Did you see the abrasion inside of Lindsey's
17 genital opening?

18 A. No, I didn't.

19 Q. You didn't look at any of those pictures or the
20 video?

21 A. No. That wouldn't be relevant to the DNA
22 analysis.

23 THE COURT: Do you have -- I'm sorry. Were you
24 done?

1 MR. LEE: I'm done. Dr. Danielson, thank you for
2 your time.

3 THE COURT: Do you have any redirect?

4 MR. FUSS: I do.

5 THE COURT: Ladies and gentlemen, we're going to
6 be in recess. During this recess, it's your duty not to
7 converse or with anyone else on any subject connected with
8 this trial, or to read, watch or listen to of any report of
9 or commentary on the trial by any person connected with the
10 trial or by any medium of information, including, without
11 limitation, newspaper, television, Internet or radio. You're
12 not to have contact with any other person.

13 We'll be in recess for approximately 20 minutes
14 until about 11:40. Please rise for the jury.

15 (The following proceedings were had outside the
16 presence of the jury.)

17 THE COURT: We remain on the record outside the
18 presence of the jury. Doctor, you may step down, please. We
19 remain outside the presence of the jury. Can you give me an
20 indication, Mr. Lee, thus far about your desire for rebuttal?

21 MR. LEE: I think I would have some points to make
22 with Mr. Gresko.

23 THE COURT: I would advise against it, counsel,
24 because I am going to cut into your closing argument time if

1 we go much farther. Mr. Fuss, your witness has been
2 repeatedly unresponsive and wasted time. I will ask you to
3 speak with him about please just listening to the question
4 and answering the question.

5 It is now 11:25 and we have not concluded evidence
6 in this case. My irritation with all of you should be
7 evident. You all assured me we would not be in this position
8 here. I recognize trials are living, breathing things, but I
9 expect all of you to conduct your examination and your
10 prepare your witnesses to be concise and direct. That is not
11 occurring. How long do you expect for redirect?

12 MR. FUSS: We're expected back in 20 minutes. I
13 would think about 15 minutes at the most.

14 THE COURT: You may have no more than that.

15 MR. FUSS: Thank you.

16 THE COURT: And for recross, can you sense?

17 MR. LEE: If you could give me five. I don't know
18 right now.

19 THE COURT: I understand these things are living.
20 I am pressuring you as you warranted to me I could when we
21 set this trial in this time period. I apologize if that
22 feels uncomfortable, but I must be direct. Do you have a
23 question, Mr. Fuss?

24 MR. FUSS: I would like to make a brief record

1 THE COURT: Go ahead.

2 MR. FUSS: On cross examination, many of the
3 questions were open ended at times and therefore my witness
4 answered those questions. Plus, there's explanation involved
5 and the prosecutor didn't ask him to stop, the Court did.

6 THE COURT: It's my job to -- please, it's my job
7 to control the progress of trial and the witness' testimony.
8 What the record won't reveal was that your witness was
9 getting very uncomfortable, as well he should have been. He
10 was also volunteering information to try to explain away
11 points that were being made during cross examination. What
12 other record would you like to make?

13 MR. FUSS: The concern I have are the Court's
14 demeanor towards my witness, number one. And number two,
15 stepping in and helping, my words, the prosecution with their
16 cross examination. He is cross examining my client about
17 specific things and leaving out the actual truth and that's
18 the only purpose for my redirect. Thank you.

19 THE COURT: Inasmuch as you see fit to make a
20 record, obviously, I have to respond. I will simply say,
21 again, much as it may discomfit you, it's my job to control
22 the witnesses and the evidence. And when witnesses are being
23 unresponsive, as I've done with several of the witnesses, not
24 just defense witnesses in this case, I will direct them to

1 answer the question.

2 As to my demeanor, the record will likely reflect
3 on more than one occasion your witness continued to talk when
4 I sought to interrupt him. So I must be direct, and if you
5 will, forceful with him. That is all the record I think will
6 reflect about my demeanor. Enough said about it. Is there
7 anything else we need to discuss?

8 MR. LEE: Nothing from the State. Thank you.

9 THE COURT: From the defense?

10 MR. FUSS: No, your Honor.

11 THE COURT: We'll be in recess.

12 (A short break was taken.)

13 (The following proceedings were had in the
14 presence of the jury.)

15 THE COURT: This is case number CR17-0636, State
16 of Nevada versus Osbaldo Chaparro. Mr. Chaparro is present
17 with his attorneys. I show the appearance of the attorneys
18 for the State. I show the appearance of the jurors and the
19 alternates. Doctor, if would you please step forward. I
20 remind you, sir, you're under oath.

21 THE WITNESS: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. FUSS:

24 Q. Dr. Danielson, on cross examination, there were

1 areas of questions you tried to answer. The first was a case
2 out of the District of Colombia, D.C.?

3 A. Yes.

4 Q. Can the jury a full explanation of what happened
5 in that case?

6 A. Yes. In that case, NMS Labs forensic testing
7 laboratory had conducted testing in a rape case that was and
8 the report was submitted to the Court. I was hired by the
9 D.C. Public Defenders Service to testify about the quality of
10 work that NMS Labs did.

11 In that case, the judge issued a ruling saying he
12 did not credit my testimony about the quality of NMS Labs'
13 testing, that he didn't think the laboratory had followed
14 scientifically rigorous methods.

15 Q. To your knowledge, was the judge himself a DNA
16 expert?

17 A. No, the judge was not.

18 MR. LEE: Judge, speculative.

19 THE COURT: The answer is out. I'm going to let
20 it stand. I overrule the objection. Go ahead.

21 BY MR. FUSS:

22 Q. And, briefly, after the judge's rulings, what were
23 the results?

24 A. After the judge's ruling, the national

1 accreditation body for forensic laboratories, the same body
2 that accredits the Washoe County Crime Lab here, that body
3 was requested to come to NMS Labs and to conduct a special
4 audit specifically to address the issues raised by Judge
5 Dickson.

6 As a result of that audit, the national
7 accrediting body said that contrary to the judge's rulings,
8 NMS Labs in fact did follow rigorous and scientifically
9 reliable methods. Therefore, my testimony was accurate that
10 the laboratory did follow good methods.

11 MR. FUSS: May I approach the witness?

12 THE COURT: You may.

13 BY MR. FUSS:

14 Q. I'm going to approach with Exhibit 25. Remind the
15 jury what that is.

16 A. This is the report from the Texas Forensic Science
17 Commission that also looked into this Washington, D.C. case.

18 Q. And for the record, that report is about an inch
19 and a half thick. How many pages to your guesstimate?

20 A. Oh, gosh, a couple hundred, 200 to 250, maybe.

21 Q. Is there a specific caveat to that report located
22 on page six?

23 A. Yes, there is.

24 Q. Would you read that caveat for the record, please?

1 A. Yes.

2 MR. LEE: Objection, it's not in evidence.

3 THE COURT: It is not.

4 THE WITNESS: On page --

5 MR. FUSS: You have to stop. I'll move to admit
6 that.

7 THE COURT: Any objection?

8 MR. LEE: Yes. It's a hearsay document, your
9 Honor.

10 THE COURT: It is a hearsay document to be sure.
11 This was an area of inquiry opened by the prosecution during
12 its impeachment examination or cross examination of the
13 doctor. I overrule the objection.

14 BY MR. FUSS:

15 Q. All right. Turning to page six, what is the
16 caveat?

17 THE COURT: Hang on. I admit the exhibit.

18 MR. FUSS: Sorry. And now I start this question.

19 THE COURT: Go ahead.

20 MR. FUSS: Been a long morning. I apologize.

21 THE COURT: That is okay.

22 BY MR. FUSS:

23 Q. What is the caveat related to that report?

24 A. So on page six of the report, the report states,

1 and I'm reading it exactly, quote, the commission's authority
2 contains important statutory limitations. For example, no
3 findings by the commission constitutes a comment on the guilt
4 or innocence of any individual. The commission's written
5 reports are not admissible in civil or criminal actions. The
6 commission has no authority to subpoena documents or
7 testimony. The information the commission receives during
8 the course of any investigation is dependent upon the
9 willingness of the stakeholders to submit relevant documents
10 and respond to questions posed.

11 The information gathered in this report has, in
12 bold, not been subjected to the standards for admission of
13 evidence in a courtroom. For example, no individual
14 testified under oath was limited by either the Texas or
15 Federal Rules of Evidence against the admission of hearsay or
16 was subject to cross examination under a judge's supervision.

17 Q. Thank you. There was also a mention of an acronym
18 called SWGDAM.

19 A. Yes.

20 Q. What is that, briefly?

21 A. SWGDAM is the scientific working group on DNA
22 analysis methods. It is organized by the FBI and it serves
23 to publish guidelines, guidelines are suggestions, to
24 the U.S. forensic community about how to do their science.

1 Q. And do you belong to or participate in a similar
2 organization?

3 A. Yes. So SWGDAM generates guidelines, those ar
4 suggestions. OSAC, the Organization of Scientific Area
5 Committees for DNA and Biology, that is a national
6 organization that is involved in setting standards, standards
7 are requirements, for forensic laboratories across the United
8 States.

9 I serve on the OSAC committee where I participate
10 in the development and promulgation of standards, including
11 standards for setting thresholds, which is one of the issues
12 that Judge Dickson had a problem with.

13 Q. Mr. Lee asked you a bunch of questions regarding
14 how often can you detect touch time DNA or similar type of
15 questions. How often can you?

16 A. So based on research that has been done using
17 realistic situations, such as I pointed out with the juice
18 jugs in the video recordings, you can detect DNA from casual
19 touch in more than 90 percent of samples.

20 Q. Also, there was a brief conversation about you not
21 being hired by, quote, unquote, the State or the prosecutor's
22 office. Why is that?

23 A. The State or prosecutor's office almost always
24 uses analysts like Mr. Gresko from their own laboratories.

1 It's extremely rare that a prosecutor would ever need to hire
2 an outside expert in DNA analysis to testify in court.

3 Q. Would you be willing to testify on behalf of the
4 State if they asked you?

5 A. Sure.

6 Q. If they retained you?

7 A. Sure. I've spent years training District
8 Attorneys. I would see no reason not to testify for them if
9 they asked.

10 MR. FUSS: I have nothing further.

11 MR. LEE: Nothing.

12 THE COURT: May this witness be excused?

13 MR. FUSS: He may.

14 THE COURT: Thank you, sir. You may step down.

15 Mr. Fuss, your next witness.

16 MR. FUSS: Your Honor, at this point -- Court's
17 indulgence. At this point, the defense rests.

18 THE COURT: Thank you very much.

19 MR. FUSS: May I approach?

20 THE COURT: Mr. Lee, do you intend to call any
21 rebuttal witnesses?

22 MR. LEE: We do not, your Honor.

23 THE COURT: Ladies and gentlemen, we're going to
24 take the noon recess. Upon your return, I will instruct you

1 on the law that applies to this case and then offer counsel
2 an opportunity to give closing arguments to you.

3 During this recess, it is your duty not to
4 discuss -- not to converse about this case among yourselves
5 or with anyone else or on any subject connected with this
6 trial or to read, watch or listen to any report of or
7 commentary on the trial by any person connected with the
8 trial by no medium of information, including, without
9 limitation, newspaper, television, Internet, smart phones or
10 radio. I ask that you return to this room at 1:30 p.m. for
11 the balance of this case. Please rise for the jury.

12 (The following proceedings were had outside the
13 presence of the jury.)

14 THE COURT: We're on the record in CR17-0636
15 outside the presence of the jury. All parties and counsel
16 are present. Mr. Lee, how long do you anticipate your close
17 to take, sir?

18 MR. LEE: Judge, my close is currently a work in
19 progress. I'm going to throw out -- I'm going to say
20 30 minutes. If your Honor would like to hold me to
21 something, I can certainly do that.

22 THE COURT: Well, notwithstanding my warning prior
23 to the last break, I'm not a fan of putting time limits on
24 closes. But here's my concern: The jury will return at

1 1:30. I gave them a full 90 minutes, because I doubt either
2 of you could see this, but several of the jurors were shaking
3 their heads, clearly not happy with the examination and cross
4 examination, by demeanor indicating to me that they were not
5 able to give full attention, if you will, to the facts in
6 this case. And so I'm trying to give them as much time as
7 they may need to recharge, undertake some nourishment, et
8 cetera, not wanting to burn more time than we have.

9 What I don't want to do in a case of magnitude is
10 give this over to the jury at 4:30 p.m. on a Friday. I think
11 that puts an unnecessary amount of psychological pressure on
12 any human being, but a jury especially to reach a decision in
13 a case like this. And we discussed this when we talked about
14 timing and it was exactly this I wanted to avoid.

15 So I'm asking you about the length, because my
16 hope would be, counsel, we could accomplish all of the
17 arguments, the State's close, the defense close, the State's
18 rebuttal, in about 90 minutes at the most. I'm not going to
19 get a timer out. I'm not going to try and step on anybody in
20 front of the jury. I would just suggest to you a couple of
21 things.

22 First, in my view, this case does not turn on this
23 DNA evidence. I could be wrong. The jury will decide and I
24 will trust whatever their decision is. But this case does

1 not turn on that evidence and we've used a lot of time to
2 talk about it. I would offer to you your consideration as
3 you make comments in close.

4 Do you have any concerns that at least as you
5 control it -- I'm not going to hold you to 30 minutes. It
6 sounds like you can do both in about 45?

7 MR. LEE: That's fair.

8 THE COURT: I'm not going to hold you to that, but
9 I'd appreciate that. Do you have any concerns about the
10 timing I've suggested, Ms. Bertschy?

11 MS. BERTSCHY: Your Honor, I'll go through mine
12 and see what I can do in order to condense it. It depends on
13 what the State brings up. I will do my best to make sure I'm
14 within that time frame.

15 THE COURT: I appreciate. Notice, counsel, I'm
16 trying very hard not to give you any time limit. I would
17 just suggest to you, I've had the opportunity to observe a
18 lot of juries over a lot of years. This jury is not happy
19 with how we've spent some of the time, in my view. Of
20 course, I'm not a mind reader. I could be wrong. I'm just
21 inferring their body language.

22 The more succinct and concise you can be -- the
23 earlier we can get it to them, which is really my concern,
24 and the better off I suspect you'll be. Is there anything

1 else you want to place in the record, Mr. Lee?

2 MR. LEE: Nothing. I appreciate that.

3 THE COURT: From the defense?

4 MR. FUSS: The only thing I forgot to do as a
5 housekeeping matter is to move in Exhibit 54.

6 THE COURT: Well, Exhibit 54 was used for
7 demonstrative purposes.

8 MR. FUSS: Right.

9 THE COURT: It will go to the jury as a
10 demonstrative exhibit if you want. Traditionally, I don't
11 admit demonstrative exhibits. Do you have any quarrel, Mr.
12 Lee? He's moved to admit it.

13 MR. FUSS: I don't need to based on that it will
14 go to the jury.

15 THE COURT: I will direct that that will go to the
16 jury if they want to consider it and certainly you can argue
17 about it.

18 MR. FUSS: Yes.

19 THE COURT: I think in actual fact it is a summary
20 of what both experts said were the results of DNA testing in
21 this case.

22 MR. FUSS: Right. I would suspect it's likely
23 repetitive.

24 THE COURT: I'll just leave it. Have I answered

1 your question?

2 MR. FUSS: Yes, your Honor.

3 THE CLERK: Just so I'm clear, Exhibit 54 will go
4 to the jury, but it's not admitted?

5 THE COURT: Correct. Thank you all very much for
6 your time.

7 (A lunch break was taken.)

8 THE COURT: This is CR17-0636, State of Nevada
9 versus Osbaldo Chaparro. All parties are present, including
10 Mr. Chaparro, outside the presence of the jury. Counsel, I
11 reconsidered my decision about the demonstrative exhibit
12 created by Dr. Danielson. I'm just going to admit it so
13 there's no question about why and how it went to the jury.
14 Do you have any objection to that, Mr. Lee?

15 MR. LEE: No. That's fine.

16 THE COURT: Mr. Fuss.

17 MR. FUSS: Your Honor, I need to make a record
18 regarding Mr. Gresko's testimony and the State
19 misrepresenting that what no conclusions can be drawn means
20 in the field, they made it inconclusive and went so far as to
21 say it could include anyone. This is not scientifically
22 accurate.

23 I know that my expert has clarified that point,
24 but I do believe his testimony also violates what you've been

1 told in the discovery, the way they used the inconclusive is
2 exactly why in the Marks court in Colorado and the Valentine
3 court in Nevada prohibits what they did. Based on that, I'll
4 make a motion for a mistrial.

5 THE COURT: I deny any motion for mistrial. The
6 evidence of guilt in case is overwhelming. The DNA evidence
7 is not at the center of that guilt. There is credible
8 testimony from a complaining witness that she was touched and
9 touched in an intimate way.

10 The defendant's conduct during his return to the
11 Eldorado Casino complex after the incident and his subsequent
12 behavior in the elevator demonstrating exactly what he did is
13 the most powerful evidence of its kind I've seen in a case
14 like this.

15 In point of fact, the evidence about DNA is
16 largely in agreement between both experts and I believe the
17 defense will appropriately emphasize Dr. Danielson's
18 conclusion, which is that no conclusions can be drawn. I
19 have not heard the State say as yet, they may mention it in
20 closing, and, if so, we'll deal with it at that juncture, but
21 I have not heard the State say yet that no conclusions means
22 anything other than no conclusions. There are logical
23 conclusions the jury can choose to derive from that.

24 But I understand and respect you making the record

1 and I want you to make the record when you need to. So thank
2 you for that. I deny the mistrial at this time.

3 MR. FUSS: Thank you.

4 THE COURT: Anything else we need that discuss?

5 MR. FUSS: No.

6 THE COURT: If you'd invite the jury in?

7 (The following proceedings were had in the
8 presence of the jury.)

9 THE COURT: This is case number CR17-0636, the
10 State of Nevada versus Osbaldo Chaparro. Mr. Chaparro is
11 present with his attorneys. I show the appearance of the
12 attorneys on behalf of the State. I show the appearance of
13 the jurors and the alternates. Welcome back, ladies and
14 gentlemen. Thank you for your patience with us.

15 It's now my duty, ladies and gentlemen, to
16 instruct you about the law that applies in this case. I'd
17 like to instruct you orally without reading to you. These
18 instructions, however, are of such importance that almost
19 every word is of some significance. Therefore, it's
20 necessary for me to read to you these carefully prepared
21 written instructions.

22 The instructions are long and some are quite
23 complicated. If they're not especially clear when I read
24 them to you, please keep in mind that when you go to the jury

1 room, each of you will have a copy or a set of these
2 instructions to make reference to.

3 I invite your attention, then, in terms of active
4 listening to the instructions as I read them and please
5 remember as I read them you'll have a copy of them to take
6 with you into the jury room.

7 (Jury instructions read at this time.)

8 THE COURT: Mr. Lee, on behalf of the State, have
9 I accurately instructed the jurors?

10 MR. LEE: Yes, you have.

11 THE COURT: Mr. Fuss or Ms. Bertschy, on behalf of
12 the defense, have I accurately instructed the jury?

13 MS. BERTSCHY: Yes, your Honor.

14 THE COURT: Mr. Lee, would you like to make a
15 closing argument?

16 MR. LEE: I would, your Honor. Ladies and
17 gentlemen, on early morning of December 17th, 2016, Mr.
18 Chaparro leaned into Lindsey and she was screaming bloody
19 murder, her words, I'm going to call 911. He leans in and
20 tells her to go ahead, do it, who are they going to believe,
21 me or you? Do it. He walks off. You see the smirk on his
22 face as he walks off back to the casino. Ladies and
23 gentlemen, that is precisely why we are here today. Who are
24 they going to believe?

1 (Video played at this time.)

2 You see at 3:25 a.m. on December 17th, Lindsey was
3 just about safe back to the Harrah's after a night out with
4 friends, a good time, before going back to law school. Just
5 about to the doors when unbeknownst to her, Mr. Chaparro, who
6 had been following her since the Eldorado attacks her.

7 (Video played at this time.)

8 Mr. Chaparro stops her, stops her forward
9 movement, grabs her, pushes her, pulls her, violently shoves
10 his hand into her female genitalia. And then has the
11 audacity to tell her, go ahead and call them, who are they
12 going to believe?

13 You see, ladies and gentlemen, the evening started
14 out fun. It was planned. They were going to have some
15 drinks. It was some old friends getting together. This was
16 going to be a good night on December 16th. On the early
17 morning, December 17th, about 1:00, 12:53 to be exact,
18 Lindsey checks into the Brew Brothers. We know that because
19 of the Patron Scan. She scans her ID, 12:53.

20 Unbeknownst to her, there's another man checking
21 into Brew Brothers six minutes later, 12:59. His name is
22 Osbaldo Chaparro. Mr. Chaparro is here today. He's the man
23 accused. He's the man who sexually assaulted Lindsey. Six
24 minutes after Lindsey checks in, Mr. Chaparro, too, in

1 addition, enters Brew Brothers.

2 Now, of course, this is now some hour and a half
3 later. The individuals are outside of Brew Brothers. You'll
4 recall after Lindsey went to the Golden Flower, had pad Thai,
5 returned back to the area and never went back into Brew
6 Brothers, but outside. And here's Lindsey, Natasha is to her
7 left and we also see this other individual. Lindsey had no
8 idea who this person was. Didn't notice him. Didn't
9 recognize him at the time. He was nobody to her. He was a
10 complete stranger. She was a complete stranger to him.

11 And yet he had a plan, whether he formulated that
12 plan at 12:59 a.m. or 3:20 a.m., it doesn't matter and he had
13 a plan and he carries it out. Here he is waiting for
14 Lindsey, waiting for her to leave. Whether he heard the
15 plans to leave and walk back by herself, we don't know. But
16 what we do know is exactly what he did. He followed her all
17 the way back.

18 And then, of course, the assault happens,
19 3:26 a.m., and just as quickly as he came and assaulted her,
20 he also leaves, tracing back his exact footsteps back to the
21 Eldorado and back with his two friends.

22 Ladies and gentlemen, the instructions that the
23 judge just read to you are important. None are more
24 important than the others and these words matter. So what

1 the State promised to prove to you at the opening statement
2 and what we are -- we have proven through evidence and
3 testimony and what I'll now explain are these elements here.

4 So element number one is that Mr. Chaparro
5 willfully and unlawfully. Did he do this on his own free
6 will? Number two, subject Lindsey in this case to sexual
7 penetration. What does that mean?

8 Let's think about what do we have here to show
9 that he subjected her to sexual penetration? We all see this
10 from the third person. We have a video. We have video
11 evidence of him committing this crime. But she felt it, she
12 saw it, she lived it and as she testified she continues to
13 live it.

14 Mr. Chaparro as she felt came from behind, he
15 grabbed her. He reached back from behind under her dress,
16 inside her pantyhose and there he digitally penetrated her,
17 digital, fingers. It was skin to skin. She felt it. She
18 testified when I asked, how do you know? She said, you know
19 when someone is touching you down there.

20 Her first person account, and then, again, we all
21 see it, we saw it, we've seen it a number of times in this
22 trial. We see exactly where his hand goes. We see exactly
23 what he's doing and we see the manner in which he does it.

24 So this word, sexual penetration, what does it

1 mean? It's defined. It is any intrusion, and this is
2 important, however slight, it doesn't say deep, it says,
3 however slight that intrusion is into the genital openings.

4 So you heard testimony from Debbie Robison where
5 the abrasion was. She found an abrasion. She saw it in
6 first person with her own eyes. She showed us on pictures.
7 The defense brought up the video and you saw it in the video
8 that was an abrasion. It was a scratching of the skin
9 surface.

10 That location where it was, was inside the genital
11 openings. There's your penetration, however slight. Again,
12 it doesn't have to be that low, however slight.

13 So we have an abrasion, the 5:00 to 6:00 area.
14 Debbie Robison's testimony, who saw this in person was that
15 she saw the abrasion, and then to confirm what she saw, she
16 then puts the toluidine blue dye on it and that confirmed for
17 her this was an abrasion.

18 The blue dye, as you heard, attaches when
19 there's -- when the cells have been obstructed or damaged in
20 some way, it attaches. And so this toluidine blue dye did
21 just that, it confirmed what she had seen. She didn't need
22 it. She had seen the injury. This only confirmed it.
23 Again, the location we talked about. This is well within the
24 genital opening as the statute requires.

1 The stinging, okay, Lindsey testified and told you
2 under oath that this stung. It stung when she urinated for a
3 few days afterwards. It was sore. She experienced soreness
4 for a few days afterwards. This is important, the stinging
5 and the soreness, because as Debbie Robison testified, that
6 is very consistent with someone who has suffered an abrasion
7 in that area of the body. It's consistent.

8 And then there was ultimately DNA tests of that
9 area of the tights. It was inconclusive. Okay. It doesn't
10 help us in this case. It doesn't hurt. It's inconclusive.
11 We can't tell. So no conclusions can be drawn from the DNA
12 testing in this case in this case.

13 In this case what do you have, again? You have
14 first person testimony who lived it. You have a video.
15 You've seen it. You have an abrasion, an injury that
16 completely matches. It's consistent.

17 So, again, sexual penetration means any intrusion,
18 however slight, into the genital openings of another by any
19 object, such as a finger. Okay. So by Mr. Chaparro's
20 actions at 3:25 on December 16th in that video at this moment
21 that you see captured on this still image, he violently
22 shoves his right hand into Lindsey's genital openings.
23 Considering that the law requires any intrusion, however
24 slight, and then considering the force with which he did this

1 act, it's your call whether he penetrated her.

2 The force is important as well when you consider
3 that. Look at his foot even lift off the ground. He bends
4 down slightly and uses such force it raises his left foot off
5 the ground.

6 That caused soreness, that caused an abrasion, and
7 in this video, it caused Lindsey to stop momentarily, to
8 stand up straight. She changed momentarily what she was
9 doing to fight and try to get away because of that pain,
10 because of that intrusion, because of that violent thrust of
11 his right hand into her genital openings. It's at this
12 moment captured at 3:25:48 that she freezes momentarily with
13 that violent thrust and shove.

14 One of the instructions is this, that the charge
15 in this case is sexual assault. That's what we've endeavored
16 to prove. That's what I'm here to argue has been proven to
17 you, that Mr. Chaparro sexually assaulted Lindsey. However,
18 in Nevada, the law allows this, a lesser included offense of
19 attempted sexual assault.

20 And this is how it works, if in your deliberations
21 you go back to the jury room, you consider the charge of
22 sexual assault fully, fairly, discussions, as you've not been
23 able to discuss before, you will once you go back into that
24 jury room. So examine it. If you all agree that Mr.

1 Chaparro is guilty of sexual assault, then you can simply
2 sign the appropriate verdict form of guilty, and as to that
3 count, request the bailiff to return you to court.

4 So this is exactly how it would work. This is a
5 verdict form that you'll receive. Again, you deliberate and
6 discuss and find he's guilty, this is the form you would
7 sign.

8 Going back, if you cannot agree, looking at the
9 third paragraph, that he is guilty of sexual assault, then
10 the law requires you to then examine attempted sexual
11 assault. Okay. Did he attempt but failed to penetrate? If
12 you unanimously agree, then you sign that appropriate verdict
13 form and return it to court.

14 Mr. Chaparro can only be found first of one or the
15 other or he may be, of course, found not guilty of either
16 one. But in this case, again, examine sexual assault. If
17 you all agree, which I believe you have plenty of evidence to
18 agree on that, then you should sign the verdict form for
19 guilty of sexual assault, leave the attempted sexual assault
20 blank. Only if you cannot agree, then you move on to
21 attempted sexual assault.

22 Here's that verdict form as we just discussed. If
23 you cannot agree as to sexual assault and ultimately find Mr.
24 Chaparro not guilty of sexual assault, then there's an

1 interrogatory at the bottom that simply asks: Have you
2 examined as it applies to attempted sexual assault? And if
3 you then agree or are able to agree that he is guilty of the
4 attempt and not the sexual assault, then this is your verdict
5 form.

6 Because attempt is part of this, this is what
7 attempt means. First, that Chaparro here attempted to commit
8 sexual assault. That he performed some act towards the
9 commission of it, such as, first, following her all the way,
10 second, grabbing her, pushing her, pulling her, thrusting his
11 hand with violent force into her crotch. Certainly some act
12 towards it.

13 And then the difference is part three, what makes
14 a difference between an attempt versus actual committing the
15 crime is just that he failed to consummate the actual crime,
16 so he did not penetrate, however slight.

17 I would argue, ladies and gentlemen, to find him
18 guilty of an attempted sexual assault would be to ignore the
19 violent thrusting of his hand, would be to ignore the
20 abrasion that was found and clearly seen by Debbie Robison
21 and you, and to ignore the evidence from Lindsey about the
22 stinging, the soreness, the pain and the feeling she had when
23 it actually happened. So, again, make no mistake, Mr.
24 Chaparro is guilty of sexual assault.

1 Count Two, moving on past those instructions.
2 Count Two charges a completely separate offense, battery with
3 intent to commit sexual assault upon a victim aged 16 years
4 or older. Battery requires these elements, that Chaparro
5 willfully and unlawfully used force or violence upon Lindsey,
6 and then the third element, with the intent to commit sexual
7 assault upon her.

8 So let's talk about force or violence first. It's
9 any intentional or unwanted application of physical force,
10 and then this phrase again, however slight, ladies and
11 gentlemen, any intentional and unwanted use of physical
12 force, however slight.

13 Was this a battery? He held on to her. He
14 reached under in her crotch area. Here he's pulling
15 backwards. While he's holding on to her, grabbing, pulling
16 backwards. Here he's pushing her. Again, it's an
17 intentional use of force, however slight, here. You see his
18 right hand on Lindsey's buttocks area, his left hand holding
19 her, grabbing her and then here, of course, that shove, that
20 shove, that violent shove. That is a use of force or
21 violence.

22 Let's talk about the intent, a third element, the
23 intent to commit sexual assault. The judge instructed you
24 that no one can jump into Mr. Chaparro's brain and give you

1 direct evidence of intent. You have to look at what he did
2 either before or after and consider all in its totality to
3 determine what his intent was.

4 So, ladies and gentlemen, we have to look and see,
5 did he want to do this? Did he intend to sexually assault
6 her? Think about it. Why is he following her? Why is he
7 grabbing her before she goes into Harrah's? Why is he
8 touching her?

9 And I forgot to mention it before, but hopefully
10 it goes without saying, against her will. This is clearly
11 against her will. I think the video shows that pretty
12 clearly.

13 But as to intent, here's Mr. Chaparro entering the
14 scene at the Eldorado. However, Lindsey goes back to her
15 friends and Mr. Chaparro follows, waiting, watching. Lindsey
16 is there having a good time with her friends, and when she
17 leaves, there he goes at 3:21.

18 He gets ahead of her on the stairs, but he doesn't
19 keep walking -- excuse me -- he does keep walking, but you
20 see him glancing back. He's making sure she's still there.
21 Another glance back. She's still there. Here he waits for
22 her at the top of the escalator. He even contacts her.
23 Clearly, she's walking away. She's not interested.

24 She turned right. He appears to be going

1 straight, but then his white shoes appear and there he is
2 again following Lindsey again. She heads out one corner door
3 while he's simultaneously heads out the other corner door.
4 And as he exits, he again looks for Lindsey.

5 Chaparro's intent is clear. You know what happens
6 next. They cross the Reno arch into the Harrah's covered
7 walkway where he sexually assaults her.

8 As to further evidence of his intent, his actions
9 afterwards give us pretty good insight into his mind as well.
10 Briskly with his left arm swinging, yet his right hand, the
11 hand by which he violently shoved into Lindsey's genital
12 openings, remains in his pocket. And only just before
13 entering the bathroom does he then remove his right hand. He
14 then spends approximately 90 seconds in that bathroom right
15 by the buffet at the Eldorado Casino.

16 And then, again, as further damming evidence of
17 his intent, what is he talking about with his buddies? What
18 is he telling them about? Well, we have that. He's showing
19 them exactly what he just did, laughing about it, they seem
20 to be. And with his right hand, showing the same motion, the
21 same movement he did.

22 Here there's more, if you're still wondering what
23 his intent was that day, there's more evidence that you can
24 consider. Let's talk about Pamala. Back in 2011, Pamala was

1 at a casino, the Nugget in this case, applying for a job.
2 She was by herself, yet there were others around. She
3 noticed Chaparro there as well. At one point, she saw him by
4 her stuff. She just simply gathered her stuff. She didn't
5 know who he was. She then later sees him outside by a bus
6 stop break dancing I think is how she described it.

7 Then when she goes to her car, near this parking
8 lot here, across Victorian, this is the Galaxy Movie Theater,
9 she goes to her car. Mr. Chaparro confronts her. He asks
10 her directions. She is -- there's another lady in the car
11 that they're directly behind. So at this point Mr. Chaparro
12 hasn't made his final move. That lady leaves.

13 Mr. Chaparro's demeanor changes and starts telling
14 her she's pretty and then what he does next is reprehensible.
15 He shoves her into that car. He commits the crime of battery
16 with intent to commit sexual assault. He's reaching in, he's
17 grabbing her breasts, he's thrusting his pelvis on her, she
18 can feel his erect penis on her back side.

19 He did that in 2011. He was convicted of that
20 charge in 2011. And that, ladies and gentlemen, can inform
21 you today, don't convict him of that charge, we're only
22 talking about 2016, however, that charge is very relevant
23 today, because that shows you his intent. You can use that
24 for his propensity and his intent to commit this type of a

1 crime.

2 We have Count Three, the count of open and gross
3 lewdness, I'll only briefly touch on this, but that Mr.
4 Chaparro intentionally committed this act of open or gross
5 lewdness simply refers to an act committed in an open manner,
6 sexual acts that are objectionable, indecent, obscene,
7 vulgar. And then lewdness as it refers -- lewdness refers to
8 sexual conduct that is obscene or indecent, moral impurity or
9 wantonness, sexually unchaste, licentious, lustful,
10 preoccupied with sex.

11 In fact, in the opening statement of the defense,
12 they concede that charge. They asked you to find him guilty
13 of that charge and we'll leave it at that.

14 Ladies and gentlemen, coming back to what Mr.
15 Chaparro said to Lindsey as she's trying to get away after he
16 had sexually penetrated her, after he reached his hand inside
17 of her, after he violated her, when she's screaming and
18 saying, threatening to call 911, what does he say? Who are
19 they going to believe? Do it? With Pamala, he also said
20 something as she's screaming, he says, just let it happen.

21 Who are they going to believe? Well, ladies and
22 gentlemen, I think you know the answer to that. You are the
23 they he refers to. Who are you going to believe? Are you
24 going to believe Lindsey or are you going to believe Osbaldo

1 Chaparro? Who are they going to believe? The evidence that
2 you saw, the injuries that you saw, the video that you saw,
3 who are you going to believe, Lindsey or Osbaldo Chaparro?

4 Ladies and gentlemen, Osbaldo Chaparro I'm asking
5 you to return a verdict of guilty, that he is guilty of the
6 crime of sexual assault. Ladies and gentlemen, Osbaldo
7 Chaparro is guilty of the crime of battery with intent to
8 commit sexual assault. And, ladies and gentlemen, Mr.
9 Chaparro is guilty of open or gross lewdness.

10 You will have the verdict forms with you in that
11 sacred jury room. I ask you to sign the appropriate verdicts
12 of guilt, tell the bailiff you're ready and have the bailiff
13 return to you this courtroom to enter those verdicts.

14 Ladies and gentlemen, thank you for your time and
15 I'll talk to you momentarily. Thank you, judge.

16 THE COURT: Thank you very much. Ladies and
17 gentlemen, while the transition occurs, I invite you to
18 stand, move around. My colleagues from the defense, would
19 you like to make a closing statement?

20 MS. BERTSCHY: May I have a moment?

21 THE COURT: You certainly may. I invite you to
22 stand, stretch, move around.

23 Ladies and gentlemen, while we take a few minutes
24 here, I hope you'll agree with me that the attorneys have

1 kept my promise to you, which is to be very hard working,
2 very talented, very diligent. You see that diligence
3 demonstrated in the preparation each side has gone to in
4 order to offer argument to you. So we'll take the time
5 necessary to prepare.

6 MS. BERTSCHY: When someone tells us a story, we
7 always wish we were there, and in this case, you have the
8 next best thing. You have a video, a video of exactly what
9 happened and you saw it with your own eyes. And when you
10 deliberate in the jury room, you have the chance and
11 opportunity to look at it again and again.

12 That's your instant replay. That's your best
13 evidence of what happened, or in this case, what didn't
14 happen. Because it's what you won't see, what you don't see,
15 what you can't see that is important in this case, that's
16 what's not on that video.

17 Now, videos are the next best thing to actually
18 being there when it occurred, because they are objective
19 recordings of what happened. They're better than human
20 memories. That's a fact. A video doesn't suffer from the
21 blurred perceptions of alcohol consumption, of confusion over
22 a sudden unexpected event. A video doesn't disremember,
23 doesn't fade, it doesn't change, doesn't evolve over time. A
24 video records the truth of what happened.

1 In our criminal justice system, Ozzy has the
2 presumption of innocence. So right now as we're standing
3 here, Ozzy is still presumed innocent. Accusations alone are
4 insufficient to prove anyone guilty of a crime. We
5 understand the power of an accusation, especially an
6 accusation like this, and that's why there must be proof.
7 There must be facts which support the accusation.

8 More importantly, in our justice system, that
9 accused is presumed to be innocent to counterbalance the
10 power of an accusation. That means when you walked into this
11 courtroom for voir dire, Mr. Chaparro was presumed innocent
12 despite the allegations in this case. And when we started
13 trial, he's still presumed innocent.

14 Now, from what you've heard from the beginning of
15 the case, on December 17th, 2016, Mr. Chaparro did not commit
16 an act which he should be convicted of in Count One or Count
17 Two.

18 As you heard from Mr. Fuss in the beginning of
19 this trial, Count Three, yes, absolutely, he's guilty of
20 Count Three. And so when you go to that verdict form, this
21 is the form that you should fill out for guilty, because it
22 was open and gross lewdness.

23 Now, because he may be guilty for one offense
24 doesn't mean you get this throw out his presumption of

1 innocence for the other two counts. He is still presumed
2 innocent until you believe the State has proved otherwise to
3 each and every element of every charge. They must overcome
4 any reasonable doubts that you have over those charges.

5 And this is what reasonable doubt means. You've
6 been instructed on it. It's been read to you by the judge.
7 It's been read to you by the State. The most important line
8 is that in order to convict on any charge, you have to have
9 an abiding conviction of the truth of the charge and it
10 simply can't happen in this case.

11 Doubt to be reasonable -- and you've got an
12 instruction this -- must be actual, not mere possibility or
13 speculation. But what that also means is that if you have a
14 doubt, you cannot find that he is guilty. If you have that
15 reasonable doubt that comes with that abiding conviction that
16 you're just not sure, that's reasonable doubt.

17 Now, you don't have to like Ozzy and you probably
18 don't after seeing the video, but that doesn't mean that he's
19 guilty of all counts. As factfinders, it's your job to
20 evaluate the evidence without emotion. And you heard Judge
21 Walker explain to you in the jury instruction, you're not to
22 use sympathies in order to reach a verdict. You can't
23 speculate. You can't guess. And you can't convict on
24 sympathy, passion, prejudice or public opinion. That's what

1 you've been on instructed to do.

2 You may rightly feel that his behavior on
3 December 17th, 2016 was inappropriate, was unacceptable. We
4 all know that nothing good happens when you're mixing alcohol
5 and partying at 3:00 a.m. in the morning.

6 His actions were over the line, it was wrong, but
7 it was Count Three, lewd and obscene conduct, nothing else.
8 And based on the objective evidence in this case, you have
9 reasonable doubt as to Count One and Two.

10 So what are the reasonable doubts that were raised
11 by objective evidence? First, the video. The video doesn't
12 show any penetration. In the video, you can see with your
13 own eyes what happened. You will not see him committing a
14 sexual assault. You will not see him battering with intent
15 to commit a sexual assault. It's simply not on the video.

16 Now, the DNA, as you've also heard, there's
17 another form of objective evidence that is just as good as
18 being there to witness what happened, scientific DNA
19 evidence.

20 Now, scientific DNA evidence or lack of evidence
21 should be all that you need to decide this case. It's
22 better, again, than human memories or blurred perceptions.
23 Scientific DNA evidence does not misremember, it doesn't
24 fade, it doesn't change and it doesn't evolve over time.

1 Scientific DNA evidence can't perjure itself or fill in gaps
2 of memory. It's simply objective fact.

3 Now, remember what you heard about the objective
4 DNA evidence. You heard that Mr. Chaparro never made contact
5 with Lindsey's genital areas. You know that because his DNA,
6 in fact, no DNA was found on her vaginal swab. His DNA, in
7 fact, no male DNA was found on her vulva swab. His DNA, in
8 fact, again, no male DNA was even found under Lindsey's
9 fingertips and her fingernail swabs.

10 Now, you heard from Ms. Robison about the
11 possibility of urination or wipes that could explain getting
12 rid of the DNA evidence, but she's not a DNA expert. And you
13 have that expert witness testimony instruction saying how you
14 can evaluate an expert testimony. And just know she's a SART
15 nurse. That's her level. That's her expertise. When she's
16 talking DNA, that's outside of her wheelhouse.

17 So rely on the experts, Mr. Gresko and Dr.
18 Danielson, and how they explain DNA and what can occur and
19 how you can have male DNA and you can test for male DNA in
20 the vagina area, in the vulva, in the vaginal area itself.
21 Going to the bathroom will not get rid of DNA. And Ms.
22 Robison watching a video on reports and evaluations done by
23 graduate students does not make her an expert.

24 What we heard from Dr. Danielson is that a touch

1 from a finger in that area, in the vaginal area did not
2 happen. There's no DNA. In measurements that go down to a
3 trillionth of a gram, invisible to the human eye, there was
4 no DNA in her vaginal area, nothing.

5 You saw in this chart and we had both experts
6 describe it, Mr. Chaparro's DNA is not located. And for the
7 black tights, it's not conclusive. That means that you can't
8 assume that Mr. Chaparro's DNA is there. There's simply no
9 objective evidence that supports that Mr. Chaparro put his
10 fingers in her vaginal area.

11 Now, how the State described it as this being a
12 very violent thrust, in fact, where he had to then move his
13 body and his foot lift up, which you don't see in the video,
14 and it really caused that abrasion, then there would have
15 been DNA evidence left behind. You saw you can get DNA from
16 less than five seconds. You heard Dr. Danielson's testimony
17 exactly how our technology has evolved to make it easy for us
18 to find and there wasn't any.

19 Mr. Chaparro's actions and behaviors that night
20 was boarish, gross, rude and crude, flat out wrong, by
21 grabbing a woman in a public place without her permission,
22 but it's not a violent sex assault that the State would have
23 you believe it to be.

24 The pantyhose, we know that Lindsey was wearing

1 thin pantyhose that evening. And on the stand, she told you
2 that Ozzy pulled her tights down. And there's some confusion
3 over whether it's at her waist. She said it started out
4 there at one point. But it was on her low hips when he
5 pulled it down, maybe pulled it to her waist. It's unclear,
6 a little below. When she poke with law enforcement, she was
7 very clear and you could see it in that video, it's not quite
8 to her knee, but just above it.

9 And the reason why that is so important is because
10 luckily we have a video. In the video, you can see the line
11 of where her pantyhose was. You can see at 3:25:34 before
12 when she says the sexual assault occurred, you can see her
13 pantyhose line. And then seconds later when she says it
14 occurred, you can still see her pantyhose line in the same
15 spot. Right after, the exact same spot. Her pantyhose don't
16 move. And what's more than that, you see with the little bit
17 of the material, you can still see that line, that black line
18 from her pantyhose and that didn't move either.

19 If he forcefully stuck his fingers in her vagina,
20 the pantyhose would have moved. Especially it would have
21 moved as far as she said it did. But not only would it have
22 moved, it would have ripped.

23 You'll have a chance to examine it if you like
24 back in the jury deliberation room. You can see how thin it

1 is and you can see how if he had forcibly moved it, if he had
2 forcibly ripped. And she was, as you can see in the video,
3 to her benefit, to her credit, she was trying to get away.
4 And if they were really involved in the tug of war like they
5 were and he then tried to within seconds lift her dress up,
6 pull down her pantyhose, insert his fingers in less than two
7 seconds, her pantyhose simply would have ripped. And you get
8 to use your common sense on that.

9 Now, pantyhose, they rip easily. That's why you
10 have to be very careful when you take them on and take them
11 off, because you can rip them with your fingernails, your
12 ring. They tear very easily. If there was this extreme
13 struggle where he is tearing, lifting, ripping, the pantyhose
14 would have ripped.

15 Lindsey mentioned she had scratches in her vagina,
16 it was sore, it hurt, but she never mentioned that at the
17 preliminary hearing where she took an oath just like she did
18 when she testified in front of you. She never told Nurse
19 Robison, who told her that she could follow-up on anything,
20 who would have prescribed her something if she had just said
21 that she hurt and that there was an injury. And you heard
22 Nurse Robison describe when she's discussing with Lindsey
23 going over where there is any injuries, she had no
24 complaints.

1 She didn't mention it to Detective Autrey who had
2 gone through extensive training the past 14 years, who told
3 you this would have been really important to know in this
4 case, and he gave her the opportunity to tell him during the
5 interview.

6 (Video played at this time.)

7 Not only does she say no after he asked her, is
8 there anything else that's important, he gave her his card,
9 he talked to her at least three more times and she never
10 mentioned it. She never mentioned it to Officer Eason, who
11 is the first officer on the scene, where he said that was
12 part of his job is to try to get as much information about
13 what happened as possible.

14 Now, Ms. Robison testified about an injury she
15 saw, an abrasion, and Ms. Nelli who is an expert who has
16 worked for the state and the defense who has conducted over
17 2000 SART exams, and that's not even counting the ones that
18 she's supervised and peer reviewed, looked at the same video,
19 looked at the same photos and could not find any abrasions or
20 injuries.

21 She saw that Ms. Robison used too much dye, placed
22 in areas that according to protocols were improper and didn't
23 use the proper equipment to test the areas that should have
24 been tested.

1 And she said that with the color that's noted in
2 the area where Ms. Robison found the abrasion, that's not the
3 correct color for if you're going to have the dye uptake.
4 Recall back to the photo of the area of where she had shaved
5 and that dark blue color, that's what she was discussing as
6 to what would actually indicate an abrasion.

7 No bruising. Lindsey told you on the stand that
8 she had bruises, fingerprint bruising, and she said at the
9 preliminary hearing that she had bruising. But she didn't
10 tell Officer Eason that her arms hurt. Absolutely, we don't
11 know when the bruising occurred, if it occurred. But if her
12 arms hurt, she would have told Officer Eason.

13 She didn't tell Ms. Robison that her arms hurt or
14 that she had bruises. Ms. Robison who would have taken
15 photos or marked in her report. Remember Robison said that
16 Lindsey had no complaints about anything involving her
17 exterior arms, legs, head, things like that, breasts.

18 And even if the bruising didn't appear until after
19 she met with them, that was before when she met with Sergeant
20 Autrey and she didn't tell Sergeant Autrey either and she
21 didn't take any photos and she didn't ask anyone to take any
22 photos.

23 Now, there's a lot of discussion with Ms. Nelli
24 about the fact that she didn't look at the length of Mr.

1 Chaparro's hands or know the length of his fingertips,
2 because, I don't know, maybe that would have been important.
3 Because it would have been. But the State and none of the
4 experts, none of the police officers took the photos. Nobody
5 took that information. And so that information wasn't before
6 any of the witnesses. It's not Ms. Nelli's fault that it
7 wasn't done. It's because the police didn't do it.

8 Now, memories are not objective evidence.
9 Innocent misrecollection happen. What happened to Lindsey
10 shouldn't have happened to her. It shouldn't have happened
11 to anyone. We're not saying she deserved what happened. And
12 you can tell from her testimony, she believes what happened.

13 But misperceiving, as we discussed in jury
14 selection, there can be someone who 100 percent believes that
15 something is real and it's just not true. We know she's
16 wrong. There's no abrasion. There's no video that shows how
17 that happened. In a sporting event, you don't see the runner
18 running out of bounds.

19 She may have thought something was inserted, but
20 it wasn't. Although she may 100 percent believe she was
21 penetrated that morning, we know it didn't happen.

22 There are people -- without a doubt, it was a
23 traumatic event. She was scared, frightened and in shock.
24 And in her interview with Detective Autrey, she even admitted

1 she couldn't remember everything, because it was quick and
2 unexpected, but it didn't happen the way she described it,
3 because the objective evidence shows us that it didn't happen
4 that way.

5 And she couldn't remember everything from the
6 night from even before when she encountered Ozzy. Lindsey
7 told you that she went to the Golden Flower to eat, remember,
8 Thai food, pad Thai like she always has. And she was adamant
9 that she was there with just Tasha and John. You heard, I
10 clarified with her, Ashley wasn't there? No. But we know
11 from the other witnesses that Ashley was there. Tasha told
12 you that Ashley was there. Ashley told you that she was
13 there and even remembered what she ate.

14 Lindsey told you that when they first went to Brew
15 Brothers, that was right after they were having shots and
16 getting ready in their hotel room, remember curling their
17 hair, getting ready, and Lindsey said after that, that's when
18 they went to Brew Brothers.

19 Now, Ashley told you that they first went to Novi.
20 Remember, that's when she had that really sugary drink, and
21 then they went to Brew Brothers. Now, alone these aren't big
22 issues where, like, you know, I have concern, but it's the
23 totality of it, over and over, just the details that don't
24 add up.

1 Initially, she told Officer Eason and Sergeant
2 Autrey she ran into Harrah's. You know from the video that's
3 not true. She walked to the door. She told Officer Eason
4 and Sergeant Autrey that he came up from behind her. She
5 told Officer Eason that he grabbed her and she had to turn
6 around and see him. We know also from the video that's not
7 true. And she told Sergeant Autrey that he grabbed her like
8 a bear hug.

9 This is the still shot from the video. When he
10 first approaches her, yes, he had come from behind, but he's
11 not grabbing on her from behind. He goes in front of her and
12 then starts talking to her. She told you that there's no one
13 else around her when Ozzy grabbed her. She testified that
14 Tasha wasn't there. And the District Attorney had asked her
15 why she didn't stop for Tasha. And she had said, because she
16 had no idea that Tasha was there. But she told Sergeant
17 Autrey that she knew that Tasha was there and thought John
18 was there, too.

19 (Video played at this time.)

20 Now, the State put a lot of emphasis on the words
21 that she says Ozzy used, who are they going to believe, me or
22 you? She called the police and the police came, who are they
23 going to believe, me or you? Well, you heard from Pamala,
24 who are they going to believe? Someone who is convicted of a

1 sex crime? It simply just doesn't make sense that he would
2 say that to her. And she may think that he did, but it just
3 doesn't make any logical sense, defies logic. He has a prior
4 conviction, of course he would think that the police would
5 believe her.

6 Lindsey said she was screaming. If she was
7 screaming bloody murder, you would have had someone react in
8 that video. You recall in the video, you see that there's a
9 man, a man who is in the back in the green towards Harrah's.
10 He walked calmly past her. He didn't say, hey, are you okay?
11 I just heard you screaming. Didn't see that.

12 And you see her friend, Tasha, walk calmly past
13 Ozzy. Didn't grab him. Didn't call 911. And said, what you
14 later saw is that Ashley -- and she told you on the stand --
15 not Ashley -- Tasha -- Tasha told you on the stand that in
16 that video when she bent over, she's laughing. She's not
17 worried about her friend who just got attack. She's
18 laughing.

19 MR. LEE: Objection, judge, that's a fact not in
20 evidence.

21 THE COURT: Ladies and gentlemen, I leave it to
22 you to discern what the facts are and what they are not. The
23 attorneys are now trying to convince you through the force of
24 their argument as to what the facts are or are not. It is

1 your determination that will control. I overrule the
2 objection. It's argument. Go ahead.

3 MS. BERTSCHY: In fact, she walks calmly back to
4 Harrah's after Lindsey and John does the same thing. Now,
5 even describing what happened to Lindsey changes. She told
6 Ashley who wrote in her statement that his hands were in her
7 vagina and she said his hands and fingers. And she even had
8 an opportunity and to corrected that part of the statement,
9 but that wasn't one of them. And Ashley told you that she
10 wrote down word-for-word what Lindsey said.

11 Lindsey has now watched the video like you have
12 several times and we don't know how many times she's spoken
13 about this. And she told you that she plays it over and over
14 in her head. Now she has different information about what
15 happened, like what he was wearing.

16 We know it was Ozzy. We're not disputing that.
17 But when the State says that how she describes him doesn't
18 change, that isn't correct. Because initially in her
19 interview, she didn't know what he was wearing and had
20 problems with describing him.

21 (Video played at this time.)

22 Now, the State is relying a lot on you to make
23 inferences in order to find that Ozzy had this sexual intent
24 when he committed this act. For Count Two, the State has to

1 prove that he had intent to commit a sexual act, but there's
2 no objective proof of his intent. He didn't say anything to
3 Lindsey that would prove his intent.

4 This is a very emotional case. We've all
5 discussed these charges are extremely serious and emotionally
6 driven. But one of your other instructions is that you can't
7 use emotion to decide this case. You can't convict on
8 emotions. You can't reach beyond a reasonable doubt on
9 emotions.

10 Now, the State spent a lot of time on Pamala and
11 that incident, but what happened to Pamala has nothing to do
12 with December 17th, 2016. Absolutely nothing to do with it.
13 It is extremely different. I'm not even going to go into all
14 the differences, because it's not anything to do with his
15 intent. This case is about one day and one event. What
16 happened back then with Pamala does not prove his intent on
17 December 17th.

18 Now, if Ozzy intended to sexually assault Lindsey,
19 it simply does not make sense with what his actions were.
20 When you look at the photos again of where they were and
21 where they exited. And for the record, this is 26. When
22 they exited the Eldorado Casino, Lindsey exited that way and
23 Ozzy had exited over that direction.

24 What's interesting, you can see Harrah's here. It

1 doesn't look so close in the video, but it's really close by.
2 You can see it in that.

3 Exhibit 27, just the walkway over. If he was
4 intending to sexually assault her, he could have taken her
5 down this way. It doesn't make sense that he would continue
6 to follow her towards another casino.

7 If you look at 29, where you can see the Harrah's
8 walkway, see how bright it's lit and how dark the areas are
9 surrounding it. Again, if he's going to commit a sexual act,
10 he wouldn't do it under that light.

11 And 30, again, you can see all the street area,
12 all the other areas where if you're going to try to commit
13 something like this, he would have done it in some sort of
14 privacy. It's just right there. He didn't usher her towards
15 it, this is 31, he didn't usher her towards the parking
16 garage, towards the street, away from people.

17 And this is 34. You heard Sergeant Autrey say
18 that down here, that's where there's an alley. You can see
19 in that photo how dark it is surrounding that walkway. They
20 didn't go there. 35. It's in front of a busy casino. And
21 that can be considered in whether or not he had sexual intent
22 and he didn't.

23 The State made a big deal of the fact that Ozzy
24 and Lindsey entered into Brew Brothers around the same time.

1 Okay. They were at the bar together. That's all you know.
2 You can't make any inferences of what may have occurred or
3 why -- how that has any play or any interaction over this
4 case except they entered in at approximately a couple of
5 minutes apart. We know it's Ozzy, so it doesn't matter if
6 they coincidentally arrived at the bar close to each other.

7 Now, in the elevator, the video in the elevator
8 doesn't prove anything. We don't know what was said, because
9 there's no audio. You don't know what they're doing, because
10 it's unclear in that video. And you don't know why they're
11 doing it. And you are not allowed to speculate.

12 Any speculation about who is doing what and what
13 they're doing, that is not allowed. And I know the State is
14 trying to argue and Sergeant Autrey is trying to argue that
15 this proves intent, this is what he was trying to do. But
16 that's not what you can find from looking at that elevator
17 footage.

18 Now, if you have in your mind what it want it to
19 be, you're going to see it that way. But what happened in
20 that video is not important. It's what happened in the video
21 at Harrah's, what happened to Ozzy, what happened with him
22 and Lindsey.

23 So go back to the objective reasons for reasonable
24 doubt, the evidence that doesn't change, doesn't fade,

1 doesn't get blurred. And on behalf of the defense, I want to
2 thank each and every one of you for paying careful attention
3 to this case. And when I'm done talking, the State will have
4 one more chance to speak with you and I don't get another
5 chance. And if they aren't able to clear up any of the
6 objective reasons for doubt, then you have to find Ozzy not
7 guilty.

8 That's your answer. And they won't be able to
9 prove beyond a reasonable doubt the first two counts. They
10 won't be able to clear up the doubt from the objective
11 evidence.

12 As we said in the beginning, the video is going to
13 be as good as if you were there. As Mr. Fuss said, this case
14 is about one event on one day, December 17th, 2016, involving
15 Ozzy and Lindsey, and you are here to judge that one day and
16 one event that happened in less than 30 seconds. And we all
17 agree that it was a lewd, gross and boarish behavior. And
18 Ozzy is taking responsibility for that lewd and crude
19 behavior, which is something most celebrities and some
20 politicians do.

21 He put his hands on her without her permission and
22 if he's guilty of Count Three, but that's it. The objective
23 evidence shows he's guilty of Count Three and nothing more.
24 So when you return to the jury room, we ask that you find him

1 not guilty of Count One, and sign this verdict form, not
2 guilty of the lesser included, and not guilty of battery with
3 intent to commit sexual assault.

4 The memory is blurred by anger, fueled by fear and
5 shaken by fear, inconsistent with the video and objective
6 evidence. The video recorded what happened and that Ozzy did
7 not commit a sexual assault, that Ozzy did not commit an
8 attempted sexual assault, and that Ozzy did not commit a
9 battery with intent to commit sexual assault. So we ask that
10 you return the verdicts of not guilty for two counts. Thank
11 you.

12 THE COURT: Thank you, Ms. Bertschy. Mr. Lee, do
13 you desire to make a rebuttal argument?

14 MR. LEE: I sure do.

15 THE COURT: Ladies and gentlemen, stand with me,
16 again, move around.

17 MR. LEE: Thank you, your Honor. Ladies and
18 gentlemen, I agree with two things that were just said, two
19 things. Osbaldo is no celebrity, he's no politician, okay.
20 You can't compare him with that.

21 I agree with this, too. These are the DNA
22 results, okay. Steve Gresko sat here and told you in his
23 vast experience, what he's done, that it is not at all
24 unusual to not find a DNA result. He's the one in the

1 trenches. He's the one doing these tests. He sees it all
2 the time. Sometimes you see it, sometimes you don't,
3 especially in a digital penetration case.

4 However, what's interesting is this, we see on the
5 video she is touching him. Her hands are on Chaparro. No
6 DNA. Okay. It's not an absolute. Even Dr. Danielson told
7 us, it's not an absolute. So if her hands on are Chaparro,
8 we see proof of that and yet no DNA, then this is
9 inconclusive, the entire thing is. That's how it is. That's
10 what the evidence shows. That's what Steve Gresko testified
11 about as to the tights. He testified no DNA in the vaginal
12 swabs. And then the ones that we actually see where her
13 hands are against him, no male DNA, okay. It is not an
14 absolute by any means.

15 MS. BERTSCHY: Objection, renew our motion.

16 THE COURT: Overruled.

17 MR. LEE: I'm sorry. There's one more thing I
18 agree with. Mr. Chaparro is presumed innocent. He is
19 presumed innocent. I do agree with that. However, you're
20 going to go back in that jury room and consider all the
21 evidence you've heard over the last two days, three days, and
22 I'm confident you'll agree that he's not innocent.

23 A couple of things, Ms. Bertschy told you, you may
24 not speculate. But just before that she said that, she said,

1 why would he have done it in this walkway? He would have
2 taken her this way. He could have taken her that way.
3 Speculate, okay, that's what she's asking you to do.

4 MS. BERTSCHY: Objection, your Honor. We're
5 starting to get into denigration where he's now doing hand
6 movements.

7 THE COURT: Overruled. This is argument.

8 MR. LEE: We'll talk about what speculation means.
9 What we're relying on representing the State of Nevada is the
10 hard, fast facts. We're asking you to consider that and
11 nothing else. Consider the video, consider what the evidence
12 is, and not as Ms. Bertschy asked, don't consider things that
13 you don't see. I'm asking you to consider the things you do
14 see. Reasonable doubt is not speculative.

15 Let me talk about intent. How do we know that he
16 had a sexual intent that night? Ms. Bertschy told you he had
17 none. He had no sexual intent. Yet in the same vein, they
18 offer up that he committed an act of open or gross lewdness.
19 That is a sexual crime. He had intent. By that, he's
20 admitting to his intent.

21 Again, as to the speculative argument that why
22 wouldn't he pull her to the right down this darker place?
23 Where did he wait until Harrah's? Well, they were all alone.
24 That was his last opportunity to grab Lindsey, because he

1 made up his mind minutes before, if not an hour and a half
2 before that time. But he made up his mind and that was his
3 last opportunity before she was going into Harrah's.

4 But let's not forget what he did in 2011. I agree
5 he's on trial for what happened in 2016, not '11, but what he
6 did in 2011 to Pamala is so instructive to you, because it
7 gives you a lot of insight into his mind.

8 There, guess where he committed his crime to which
9 he was convicted? In broad daylight. Okay. This isn't a
10 guy who pulls people aside in dark alleys. This is a guy who
11 is brash, he's brazen, he's lewd, crude and boarish. Okay.
12 He does it when he wants to do that.

13 That's exactly what he did then, that's exactly
14 what he did in 2016 to Lindsey, broad daylight and just waits
15 for a little opportunity when he thinks he's alone before he
16 attacks.

17 So, please, don't buy any arguments that there's
18 no sexual intent. That intent was there long before he
19 assaulted Lindsey. His actions afterwards absolutely show
20 it.

21 You know, I need to hit one more time on that DNA,
22 because, again, Steve Gresko said he was not surprised by not
23 finding DNA. Debbie Robison agreed and Claire Nelli even
24 told you about a case, a published decision or a decision

1 that had some authority where she testified as to a victim
2 named Angelique who suffered injuries, genital injuries, and
3 guess what, no DNA returned. So even Claire Nelli agrees
4 with that.

5 I am not trying to show this to bore you, ladies
6 and gentlemen. I'm just going to play this, because it's so
7 important.

8 (Video played at this time.)

9 This attack is short in length, because it's
10 interrupted by Lindsey fighting back, by a show of strength
11 on her part. It was interrupted by other individuals coming
12 into the scene, just like it was interrupted in 2011.

13 And right away, he's bear hugging her. He's got
14 his right hand ready to thrust. He's pulling. He's still
15 pushing. He's pushing, he's grabbing ahold of her. And then
16 the most violent of his acts, and look at him thrust, lean
17 down, bend the knees, lift his left foot up, and Lindsey
18 freezes, right hand is her breast. And here he is telling
19 her, do it, who are they going to believe?

20 So I ask you, contrary to what the defense said,
21 they said you will not see a battery. You can't not miss
22 that.

23 MS. BERTSCHY: Objection, misstates the evidence.

24 THE COURT: Overruled. Again, ladies and

1 gentlemen, it's your recollection of the evidence that
2 controls. Please go ahead, Mr. Lee.

3 MR. LEE: Thank you. She said you will not see a
4 sexual penetration, however slight. I'm not sure if we're
5 looking at the same video. That's the video where you see it
6 all. It's up to you to decide what you saw. But it's very
7 clear, that violent shove, the grabbing, the pulling, the
8 sexual intent tied to Count Three as well as the others
9 because of what he did, because of the way he shows his
10 buddies what he did by thrusting his hand, by the way he's
11 covering his right hand.

12 Ladies and gentlemen, I'm arguing these things,
13 it's really just your common sense. You don't check that at
14 the door. You bring that with you into that deliberation
15 room. I hope you use it. That's why we all selected you to
16 be jurors. You have common sense and actually, collectively,
17 you have more common sense than anybody else in this
18 courtroom. You'll act together in this event that is going
19 to happen when you go into that jury room.

20 With that collective knowledge, your common sense,
21 your duty to do justice here, we're confident you'll find Mr.
22 Chaparro guilty of everything, all three counts. I'm asking
23 you not to consider what you don't see, don't speculate,
24 consider what you see. Because it's not just simply doubt,

1 ladies and gentlemen, that causes a not guilty verdict. It's
2 a reasonable doubt. Doubt to be reasonable must be actual,
3 not mere possibility, such as he should have done this, or
4 the tights should have ripped.

5 It's not mere speculation. Those same things,
6 look at the cold, hard evidence we presented from the
7 witnesses that sat on this witness stand and emotionally told
8 you the truth and look at the video that you have with you.

9 (Video played at this time.)

10 MS. BERTSCHY: Your Honor, at this point, I
11 object, it's outside of rebuttal.

12 THE COURT: I hear your objection. The evidence
13 being displayed is for lack of the evidence number the
14 actions of the gentlemen on the elevator. I find this
15 responsive to your argument and your objection is overruled.
16 That means you may proceed, Mr. Lee.

17 MR. LEE: Laughing, smiling, same look he had as
18 he passed by the camera right in his face after he committed
19 the sexual assault.

20 Now, Ms. Bertschy told you that someone tells a
21 story, we all wish we were there. I can tell you someone who
22 wishes she wasn't there. Lindsey wishes she wasn't there,
23 yet she was. She lived that story. She was inside that
24 story. She knows that story all too well. She told you it

1 haunts her. She thinks about it every day. She knew it was
2 there, what happened.

3 Who are they going to believe? Ladies and
4 gentlemen, that is you. As I said before, you have more
5 collected wisdom, knowledge, common sense than anyone in this
6 courtroom and that's why the law puts it on you to do justice
7 in this case. I urge you to carefully consider the evidence.
8 I urge you to discuss, to deliberate with your fellow jurors.
9 I urge you to consider the testimony you heard and with the
10 emotion you heard it.

11 And with all of that, we are confident,
12 Ms. Northington and I, that you'll find Mr. Chaparro guilty
13 of Count One, sexual assault; guilty, Count Two, battery with
14 intent to commit sexual assault; and Count Three, open or
15 gross lewdness. Thank you, ladies and gentlemen.

16 THE COURT: Thank you very much, Mr. Lee.

17 Ladies and gentlemen, I now give the case to you.
18 I don't know if you discerned it or not, Mr. Peterson, you
19 are the alternate in this case. And in a moment, I will
20 excuse you while the jury retires to deliberate.

21 I must remind you, once you leave, Mr. Peterson,
22 you may not discuss this case with anyone. You may not reach
23 out to anyone to report your service on the case or discuss
24 the facts and evidence in the case. I'll ask you to leave

1 your telephone number with Deputy Vietti, and once the jury
2 has returned a verdict, contact you and then I'll release you
3 from that admonition. Between now and then, you're free to
4 go about your business and do as you please.

5 I want you to understand something critically
6 important, this case could not have gone to trial without
7 alternates. As you see demonstrated, one of the alternates
8 is now one of the jurors in this case. And you have
9 performed a critical service for which we all thank you.

10 To the remainder of you, ladies and gentlemen, I
11 now release you from the admonitions that previously applied
12 in this case. In fact, I order that you now form and express
13 opinions. I order that you now discuss the case and the
14 evidence in the case. I order that you follow the jury
15 instructions, which among other things, prescribe that you
16 choose a foreperson and that you deliberate and confer on the
17 evidence and the facts in this case.

18 In a moment, I'm going to have Deputy Vietti sworn
19 as the officer to take charge of all you. I'm going to ask
20 Deputy Vietti collect from you your cell phones so that
21 during the period of your deliberations, the persons with
22 whom you confer or discuss or are only the other jurors.

23 Further, I order that you shall allow no person,
24 save and except Deputy Vietti, to have contact with you

1 during the period of your deliberations. She is your contact
2 with the world, as it were, and you are to remain sequestered
3 during the period of your deliberations.

4 Would you please swear Deputy Vietti to take
5 charge of the jury.

6 (Deputy Vietti sworn at this time.)

7 THE COURT: Ladies and gentlemen, I give you over
8 to the care, custody and control of Deputy Vietti. We will
9 await your deliberations and verdict. Please rise for the
10 jury.

11 We are main on the record in CR17-0636, State of
12 Nevada versus Osbaldo Chaparro. We're outside the presence
13 of the jury. Mr. Chaparro and counsel, counsel for the State
14 are present. Mr. Lee, is there anything you desire to place
15 into record at this juncture?

16 MR. LEE: No, thank you.

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

18 MS. BERTSCHY: No, your Honor. Thank you.

19 THE COURT: I have two general areas of comment
20 I'd like to offer to all of you. First, to counsel, I
21 acknowledge these cases are among the most difficult to be
22 tried. They are laden with pathos, difficulty and difficult
23 circumstances. I assure you that any of the rulings I've
24 made or any of the comments I've made are in no way intended

1 to diminish the quality of your labor or the amount of your
2 labor. I have watched four attorneys work very, very hard to
3 produce the best possible case they can and I'm deeply
4 appreciative of that.

5 To those of you in the audience, I offer this:
6 I'm the gallery is full. The public should and must see what
7 happens in criminal trials. In fact, Mr. Chaparro's
8 constitutional rights include a public trial.

9 If you all elect to return when the jury returns
10 its verdict, I welcome your attendance, however, I must offer
11 one caution. Because of the nature of the allegations in
12 this case and the, no doubt, strong feelings either side, as
13 it were, may have, if you react to the verdict verbally or
14 with body language, I will ask that you be removed from the
15 courtroom.

16 We must honor the dignity of the proceedings by
17 not showing inappropriate reactions, whatever the verdicts or
18 verdict may be in this case. I welcome all of your return.
19 I only ask that you consider my remarks.

20 Counsel, I order that before you leave this room
21 you give an active telephone number to the court clerk should
22 I need to contact you with any jury questions or for a
23 verdict. Otherwise, you're free to return to your business
24 as you may like.

1 Again, it's been my deep and profound privilege to
2 participate in this case with all of you. I thank you for
3 your time, labor, talents and efforts. We await the call of
4 the jury.

5 (Jury deliberating.)

6 THE COURT: So this is CR17-0636, State of Nevada
7 versus Osbaldo Chaparro. Mr. Chaparro is present with his
8 attorneys. I show the appearance of counsel on behalf of the
9 State. We're outside the presence of the jury. The bailiff
10 or the deputy has been informed that the jury has reached a
11 verdict and I'm going to invite the jury in in a moment.

12 I would like to remind all of in the gallery,
13 again, of my solemn request that we give these proceedings
14 the dignity to which they're entitled. No matter what the
15 verdicts may be in this case or may not be, I ask that you
16 keep any celebrations or verbalizations or strong physical
17 gestures out of the presence of the jury.

18 Deputy, would you kindly invite the jury.

19 (The following proceedings were had in the
20 presence of the jury.)

21 THE COURT: Again, this is CR17-0636, the State of
22 Nevada versus Osbaldo Chaparro. Mr. Chaparro is present with
23 his attorneys. I show the presence of the attorneys on
24 behalf of the State. I show the appearance of the jurors.

1 I note, Mr. Trotter, as you walked in you had a
2 fateful binders in your hands. Can I presume from that that
3 you have been elected foreperson?

4 A JUROR: Yes, sir.

5 THE COURT: Mr. Trotter, has the jury reached a
6 verdict in this case?

7 A JUROR: We have.

8 THE COURT: Deputy, would you deliver those to me,
9 please. While I review those forms, Ms. Clerk, would you
10 please take the roll of the jurors.

11 THE CLERK: Yes, your Honor.

12 (Roll of jury taken.)

13 THE CLERK: They're all present, your Honor.

14 THE COURT: Thank you, Ms. Clerk. Would you
15 please read the verdicts of the jury. Mr. Chaparro, would
16 you please stand?

17 (Verdicts read at this time.)

18 THE COURT: Thank you very much. You may be
19 seated. Counsel, before the verdict is recorded into the
20 minutes of the Court, does either side ask that the jury be
21 polled? First, on before of the State?

22 MR. LEE: No, your Honor.

23 THE COURT: Ms. Bertschy?

24 MS. BERTSCHY: Yes, your Honor.

1 THE COURT: Ms. Clerk, would you please poll the
2 jurors as to whether or not this is their verdict
3 individually.

4 THE CLERK: I'm going to ask you now and identify
5 you by your number if these are your verdicts as read.
6 Please answer yes or no.

7 Juror number one, is this your verdict as read?

8 A JUROR: Yes.

9 THE CLERK: Juror number two, is this your verdict
10 as read?

11 A JUROR: Yes.

12 THE CLERK: Number three, is this your verdict as
13 read?

14 A JUROR: Yes.

15 THE CLERK: Juror number four, is this your
16 verdict as read?

17 A JUROR: Yes.

18 THE CLERK: Juror number five, is this your
19 verdict as read?

20 A JUROR: Yes.

21 THE CLERK: Number six, is this your verdict as
22 read?

23 A JUROR: Yes.

24 THE CLERK: Juror number seven, is this your

1 verdict as read?

2 A JUROR: Yes.

3 THE CLERK: Juror number eight, is this your
4 verdict as read?

5 A JUROR: Yes.

6 THE CLERK: Juror number nine, is this your
7 verdict as read?

8 A JUROR: Yes.

9 THE CLERK: Juror number ten, is this your verdict
10 as read?

11 A JUROR: Yes.

12 THE CLERK: Juror number eleven, is this your
13 verdict as read?

14 A JUROR: Yes.

15 THE CLERK: Juror number twelve, is this your
16 verdict as read?

17 A JUROR: Yes.

18 THE COURT: The verdicts of the jury will be
19 recorded into the minutes of the Court. Ladies and
20 gentlemen, as you know, the right to trial by jury is one of
21 the basic fundamental constitutional guarantees. I firmly
22 believe in the right as I've demonstrated and the right of
23 every person accused of a crime to be judged by a fair and
24 impartial jury. We must have jurors and jury service is

1 something that sometimes people shirk from. You did not.

2 In my words in voir dire, you gave honor to the
3 service of the young men and women around the world who serve
4 and to the founding fathers of our constitutional system of
5 government.

6 I'm so pleased that the 12 of you have been
7 willing to give of your valuable time. You've been attentive
8 and conscientious throughout trial. On behalf of counsel and
9 the parties and the staff of Department Seven, thank you for
10 your deliberation in this case. I thank for your time and
11 your efforts.

12 The question may arise as to whether now you may
13 talk to other persons regarding this matter. I release you
14 from the admonition that's applied throughout this case. You
15 can talk about your verdicts with anyone you'd like to talk
16 about it. More importantly, you don't have to talk about
17 your verdicts with anyone you don't want to talk about.

18 If anyone should insist on speaking with you after
19 you've indicated you do not want to talk to them, reach out
20 to Deputy Vietti, and trust me, she and I will react
21 accordingly.

22 You are released with my thanks. On occasion, the
23 attorneys would like to have an opportunity to speak with you
24 if have a desire to speak with them. They will wait

1 unobtrusively out in the hallway and if you want to pause and
2 talk with them, you can. I will remain in the courtroom
3 should you have any questions for me about the court system
4 or the court process.

5 Otherwise, I invite you to return to your families
6 and to your homes and to this three-day weekend. This has
7 been a difficult case. The subject matter is painful for all
8 involved. I deeply respect your verdict and your time and I
9 thank you finally and once again for your service. You are
10 released. Please rise for the jury.

11 THE COURT: Mr. Chaparro, I direct your attention
12 to the deputies behind you and order you returned to custody.
13 Please be seated, folks. Let's set a date and time for
14 sentencing, please.

15 THE CLERK: May 7th at 9:00 a.m..

16 THE COURT: That's a special set time in the
17 anticipation that it will take some time. I know we'll have
18 to review a psychosexual evaluation. I'm suspect the victim
19 may want to make an impact statement. Ms. Bertschy.

20 MS. BERTSCHY: Your Honor, I would note I may not
21 be available for that date. I would just reach out to
22 opposing counsel if that happens as soon as I -- I just have
23 obligations outside of this country that I may have to
24 attend. If that's the case, I will reach out in advance.

1 THE COURT: Please do that sooner rather than
2 later. I'm sure counsel will be professionally accommodate
3 any such request. I think it's important that Mr. Chaparro's
4 attorneys be here. This will be a critical event to be sure.

5 MS. BERTSCHY: Yes, your Honor.

6 THE COURT: Anything else you want to place into
7 the record on behalf of the State, Mr. Lee?

8 MR. LEE: No, your Honor. We appreciate you, your
9 Honor. Thank you.

10 THE COURT: Anything else you would like to place
11 on the record from the defense?

12 MS. BERTSCHY: No, your Honor. Thank you.

13 THE COURT: Once again, I leave you with my
14 compliments and my reiteration that it's been my privilege to
15 try this case with all of you. Good luck to you, Mr.
16 Chaparro.

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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 14, 2020, at the hour of
8 8:45 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the trial volume IV in the matter of THE
10 STATE OF NEVADA, Plaintiff, vs. OSBALDO CHAPARRO, Defendant,
11 Case No. CR17-0636, and thereafter, by means of
12 computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 788, 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 16th day of September 2020.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24