

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS JASON BERNAL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
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D. Ct. 20-CV-009

APPEAL FROM JUDGMENT OF
THE HONORABLE JOHN P. SCHLEGELMILCH

THIRD JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 3

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1 the charges set forth against Mr. Bernal in this case?

2 PROSPECTIVE JUROR: Yes, sir.

3 MR. KALTER: Okay. And despite what you went
4 through ten years ago, are you able to presume
5 Mr. Bernal innocent?

6 PROSPECTIVE JUROR: Yes, sir.

7 MR. KALTER: Okay. Unless the State prove
8 their case beyond a reasonable doubt, would you have
9 any qualms returning a not guilty verdict?

10 PROSPECTIVE JUROR: No.

11 MR. KALTER: Okay. Is there anything about
12 your experience that would distract you from listening
13 to the evidence in this case?

14 PROSPECTIVE JUROR: No, sir. I was roofied, so
15 I don't have much recollection of the event.

16 MR. KALTER: Okay. But how about just the fact
17 that that had happened to you, do you think that would
18 overwhelm your mind and make it hard for you to listen
19 to the evidence set forth in this case?

20 PROSPECTIVE JUROR: No, sir.

21 MR. KALTER: Okay. Thank you.

22 THE COURT: Okay. Thank you, Ms. Rew. You're
23 still on. So, you can go back into the other --

24 PROSPECTIVE JUROR: All right.

1 THE COURT: -- jury room.

2 PROSPECTIVE JUROR: Go out?

3 THE COURT: If you need to take a lap, you got
4 to go around.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: If you need to take a bathroom
7 break or something, go right ahead.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: We'll be another five minutes or
10 so.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Thank you.

13 Okay. You can bring in Ms. Campbell, please.

14 Come on in, Ms. Campbell. And you can just --
15 yeah, have a chair right there in the middle.

16 Okay. So, Ms. Campbell, you indicated that you
17 had some feelings that you'd like to express outside
18 everybody?

19 PROSPECTIVE JUROR: Yes. I couldn't believe
20 how I had such an immediate emotional reaction when I
21 found out what the case is. And -- because of my
22 personal experience in being molested as a child and
23 the damage that it does to a person. I don't know that
24 I could not put myself in the child's position only.

1 So, I don't think I could be unbiased.

2 THE COURT: Okay.

3 Mr. Merrill, you indicated you had some
4 questions in relation to that?

5 MR. MERRILL: Just briefly.

6 Thank you for being here.

7 PROSPECTIVE JUROR: Okay.

8 MR. MERRILL: So, you indicated you would be
9 biased in this case?

10 PROSPECTIVE JUROR: I -- yeah, I'm afraid I
11 would be. I mean, I have to be honest.

12 MR. MERRILL: Okay. I appreciate that.

13 PROSPECTIVE JUROR: I may put myself, like I
14 said, in the child's position.

15 MR. MERRILL: Okay.

16 PROSPECTIVE JUROR: And I felt like that
17 immediately.

18 MR. MERRILL: Immediately --

19 PROSPECTIVE JUROR: Just talking about the
20 case.

21 MR. MERRILL: Okay. And you wouldn't be able
22 to listen to the full evidence that's presented before
23 making a decision?

24 PROSPECTIVE JUROR: I can't say with full

1 conviction, yes.

2 MR. MERRILL: Okay. Thank you for being here.

3 PROSPECTIVE JUROR: Okay.

4 THE COURT: Anything further -- wait, wait,
5 miss -- miss, hold on --

6 PROSPECTIVE JUROR: Oh.

7 THE COURT: -- Ms. Campbell.

8 PROSPECTIVE JUROR: I thought he said thank you
9 for being here.

10 THE COURT: Hold on.

11 PROSPECTIVE JUROR: Sorry.

12 THE COURT: Do you have any questions,
13 Mr. Kalter?

14 MR. KALTER: I think Ms. Campbell knows about
15 what's going to happen.

16 I don't have any follow-up on that.

17 THE COURT: All right.

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: So, I am going to excuse you,
20 Ms. Campbell. Some cases are just not right for other
21 people.

22 PROSPECTIVE JUROR: Yeah. I just don't feel
23 that I'm a good fit for this.

24 THE COURT: Well, if you feel any advocacy

1 position --

2 PROSPECTIVE JUROR: Uh-hum.

3 THE COURT: You know, that's very important for
4 you to disclose, and we thank you very much.

5 PROSPECTIVE JUROR: Okay.

6 THE COURT: So, you're excused. Okay?

7 PROSPECTIVE JUROR: Thank you. I feel sorry
8 for bolting. Two sides.

9 MR. KALTER: Thank you.

10 THE COURT: All right. So, counsel, this is
11 what we're going to do. We're going to replace
12 juror -- we're going to go in order. We'll replace
13 juror five first, Ms. Campbell. Okay? And then we'll
14 replace juror ten, Mr. Evans. Okay?

15 All right, you got that, Cherie?

16 THE BAILIFF: I missed what you just said.

17 THE COURT: We're going to put five in first.
18 Ms. Campbell's seat, we're going to seat first.

19 THE BAILIFF: Okay.

20 THE COURT: Okay? And then Mr. Evans' seat
21 we'll seat second.

22 THE BAILIFF: Okay.

23 THE COURT: Okay? All right?

24 Yes.

1 MR. KALTER: I don't know if you overlooked
2 this or were planning to do this at a different time.
3 My witness list has not been set forth in front of the
4 jury yet.

5 THE COURT: You're right. Do you have one?

6 MR. KALTER: Yes.

7 THE COURT: Okay. We'll do that next. How
8 about that?

9 MR. KALTER: Okay.

10 THE COURT: I think I -- I think I skipped
11 right by the defense witnesses. So --

12 MR. KALTER: I didn't want to raise it in
13 there, so.

14 THE COURT: No, and that's fine. Thank you.
15 Yeah, we'll get that next.

16 MR. KALTER: Cool.

17 THE COURT: Okay?

18 All right. So, go right in.

19 (Back in open court.)

20 THE COURT: All righty, folks. Thank you for
21 bearing with us. Took a little longer than I expected.

22 Okay. So, Madame Clerk, please call the next
23 prospective juror number five.

24 THE CLERK: Heather Christensen.

1 THE COURT: And then prospective juror number
2 ten.

3 THE CLERK: Elizabeth Stix.

4 THE COURT: Okay. So, Ms. Christensen and
5 Ms. Stix, is there anything -- would you have answered
6 any of the questions in the affirmative that I
7 previously asked anybody?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Okay.

10 No, sir?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Okay. Ms. Stix?

13 PROSPECTIVE JUROR: My dad was a
14 Churchill County Deputy, but long before I was born.

15 THE COURT: Okay. Is there anything about that
16 particular situation that would prevent you from
17 listening to the evidence in this case?

18 PROSPECTIVE JUROR: No, Your Honor.

19 THE COURT: Okay.

20 And yes, Mr. Christensen -- I'm sorry, Miss.

21 PROSPECTIVE JUROR: One more thing actually.
22 My mother-in-law was a former dispatcher for Salt Lake
23 County. (Inaudible) I don't believe it would affect or
24 impair my ability to be impartial.

1 THE COURT: All right. There's something wrong
2 with that mic. Don't even use it. If you could just
3 lower the mask just a little bit so I can hear you
4 little better, ma'am?

5 PROSPECTIVE JUROR: My mother-in-law was a
6 dispatcher I believe in I want to say Salt Lake County
7 years and years ago. I don't think it would affect my
8 ability to be impartial in this case.

9 THE COURT: Fair enough. Thank you.

10 All right. So, would both of you be willing to
11 follow the presumption of innocence and reasonable
12 doubt instructions that I gave?

13 PROSPECTIVE JUROR: Yes.

14 PROSPECTIVE JUROR 2: (Nods head.)

15 THE COURT: Okay. Have either of you ever
16 served on a jury before?

17 PROSPECTIVE JUROR: No.

18 PROSPECTIVE JUROR 2: (Shakes head.)

19 THE COURT: In relation to the other questions
20 I asked, would there be any reasons where you feel that
21 your impartiality to serve as a juror would be impaired
22 in this case?

23 PROSPECTIVE JUROR: No.

24 PROSPECTIVE JUROR 2: (No audible response.)

1 THE COURT: Yes, Ms. Christensen?

2 PROSPECTIVE JUROR 2: I am hesitant to to say
3 I'm impartial because my husband and I were both
4 victims of sexual assault. Him as a child, me as an
5 adult. So, I'm not a hundred percent certain I can be
6 fully impartial in this situation.

7 THE COURT: Okay. So, I guess the question --
8 the question I have for you, ma'am, is do you feel that
9 you can set aside your personal feelings in relation to
10 this matter, listen to the evidence that's presented in
11 the courtroom, and then come up with your own
12 independent determination as to the facts, and then
13 apply them to the law that I give?

14 PROSPECTIVE JUROR 2: In this case, I would
15 make my best effort, but I don't know if I could
16 100 percent guarantee that I could stay impartial the
17 whole time.

18 THE COURT: Okay. So, you feel you might feel
19 an advocacy on behalf somebody in this?

20 PROSPECTIVE JUROR: Because my past experiences
21 and my husband's past experiences, yes.

22 THE COURT: Okay.

23 All right. So, any questions?

24 MR. KALTER: No, Your Honor. I appreciate

1 Ms. Christensen speaking outright and sharing that with
2 us. And I think a different case would be more
3 appropriate.

4 THE COURT: Mr. Merrill?

5 MR. MERRILL: No objection. Thank you.

6 THE COURT: All right. Thank you,
7 Ms. Christensen. I'm sure we can find a better case
8 for you in the future.

9 PROSPECTIVE JUROR 2: I hope so.

10 THE COURT: All right. Thank you.
11 Please call the next prospective juror.

12 THE CLERK: Gary Coon.

13 THE COURT: Mr. Coon, how are you today?

14 PROSPECTIVE JUROR: I'm fine. Thank you, sir.

15 THE COURT: Good. Did you hear the questions
16 the I previously asked?

17 PROSPECTIVE JUROR: I have.

18 THE COURT: Would you answer any of those in
19 the affirmative?

20 PROSPECTIVE JUROR: Several of them.

21 THE COURT: Okay. So, let's start from the
22 beginning. You know anybody in relation -- that's
23 involved in this matter?

24 PROSPECTIVE JUROR: I do not.

1 THE COURT: Do you know anybody from the DA's
2 office?

3 PROSPECTIVE JUROR: I do not.

4 THE COURT: From the defense counsel's office?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: The defendant?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Okay. Law enforcement?

9 PROSPECTIVE JUROR: I -- from 2015 to 2018, I
10 worked down in the jail to do assessments for the jail.
11 I worked for the Department of Health for the psych
12 team, mental health person.

13 THE COURT: Okay. Is there anything about that
14 interaction that would prevent you from listening to
15 the evidence in this case?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: So, you feel you can listen to the
18 evidence in this case, come to your own independent
19 determination as to what happened, and make a decision
20 based on the law that I give to you?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Have you ever served as a juror
23 before?

24 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: And what type of case was that?

2 PROSPECTIVE JUROR: It was criminal.

3 THE COURT: Criminal. Without telling me what
4 the verdict was, did you reach a verdict in that
5 matter?

6 PROSPECTIVE JUROR: We did, sir.

7 THE COURT: Okay. Is there anything about that
8 experience that would prevent you from listening to the
9 evidence in this case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Do you have any bias or prejudice
12 against anybody in relation to this matter?

13 PROSPECTIVE JUROR: I do not.

14 THE COURT: Do you have any health, business,
15 or personal reason that you feel would interfere with
16 your impartiality to sit as a juror?

17 PROSPECTIVE JUROR: No. But I hope you got
18 better chairs.

19 THE COURT: We'll be in the actual courtroom
20 when we actually try the case. So, yes, hopefully our
21 chairs will be a little bit better.

22 PROSPECTIVE JUROR: Thank you, sir.

23 THE COURT: All right. So, you heard
24 reasonable doubt instruction; is that correct,

1 Mr. Coon?

2 PROSPECTIVE JUROR: I have, sir.

3 THE COURT: Okay. And do you have any problem
4 following that instruction?

5 PROSPECTIVE JUROR: No, sir, I don't.

6 THE COURT: Is there anything else that you
7 feel you want to let me know?

8 PROSPECTIVE JUROR: I don't. No, I don't think
9 so.

10 THE COURT: Okay. Just checking. All right.
11 Just in case I missed something.

12 PROSPECTIVE JUROR: No.

13 THE COURT: All right.

14 Okay. So, now, ladies and gentlemen, we're
15 going to open it up to counsel to ask you -- to inquire
16 and ask you some -- oh, before we do that.

17 Thank you, Madame Clerk, by the way.

18 I forgot to give you a list of defense
19 witnesses. So, let's go through those real quick.

20 So, Mr. Kalter, do you have a list of defense
21 witnesses, please?

22 MR. KALTER: Yes, Your Honor.

23 I'm going to read these slowly and hopefully
24 loudly enough. I'm not sure anyone in the back could

1 see the print from here anyway.

2 In addition to the State's witnesses, the
3 defense has several potential witnesses. A couple are
4 the same as the State's.

5 Teresa Bachler, Larson Lelund, Marlene Nish,
6 OS, Dr. William O'Donohue, Dr. Deborah Davis,
7 Detective Marty Dues, Deputy Nicholas Greenhut, and
8 private investigator Justin Olson.

9 THE COURT: Okay. So, does anybody recognize
10 any of those names? Okay. Thank you.

11 All right. So, Mr. Merrill, the State can
12 supplement the Court's voir dire.

13 MR. MERRILL: Thank you, Judge.

14 Good morning again, ladies and gentlemen.
15 Thank you all for being here today. Especially on some
16 unusual circumstances with the masks and COVID and
17 everything that's going on.

18 It's my opportunity to now ask a few questions.
19 I don't get many opportunities to address you
20 individually. I would encourage you just to, some of
21 my question's very open-ended, feel free to express
22 yourself. And we're just looking for, again, fair and
23 impartial jurors.

24 So, by a show of hands here, has anyone ever

1 had to fill out a police reports or report for an
2 insurance company? Okay. Let's start here in the
3 first row.

4 What's your name again?

5 PROSPECTIVE JUROR: Brandi Lett.

6 MR. MERRILL: Brandi?

7 PROSPECTIVE JUROR: Yeah.

8 MR. MERRILL: What's your last name? I'm
9 sorry.

10 PROSPECTIVE JUROR: Lett.

11 THE COURT: Lett. Okay.

12 Have you had to fill out a police report?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Okay. And what was that for?

15 PROSPECTIVE JUROR: I worked for Kentucky Fried
16 Chicken. We had a couple of robberies I had to do the
17 police report for, and then a couple of property damage
18 issues.

19 THE COURT REPORTER: A couple of what? What
20 was the second one?

21 THE COURT: Property damage issues.

22 THE COURT REPORTER: Okay.

23 MR. MERRILL: And was -- were those recently?

24 PROSPECTIVE JUROR: I've had one recently, in

1 fact, in the last month.

2 MR. MERRILL: Okay. Okay.

3 And so, you had Lyon County Sheriff's Office
4 come out and --

5 PROSPECTIVE JUROR: Yes.

6 MR. MERRILL: -- and speak with you? Okay.

7 And how did that interaction go between
8 yourself and Lyon County?

9 PROSPECTIVE JUROR: It went well.

10 MR. MERRILL: Okay. And did you have to fill
11 out any kind of reports or any kind of sort of
12 statement?

13 PROSPECTIVE JUROR: Just the initial report
14 that, the report they ask questions and fill out the
15 information and phone number and then they can do their
16 investigation. Other than that, no interaction.

17 MR. MERRILL: Okay. Thank you.

18 THE COURT REPORTER: Other than that what?

19 THE COURT: No interaction.

20 MR. MERRILL: Thank you.

21 Yes. And ma'am here in second row. What's
22 your name?

23 PROSPECTIVE JUROR: Eldawna Koch.

24 MR. MERRILL: Ms. Koch, thank you for being

1 here.

2 PROSPECTIVE JUROR: In about 2010, my mother
3 had jewelry stolen from her home. So, we had to file
4 an insurance report. She was on hospice at the time.

5 And in about 1998, my apartment was broken into
6 in Washoe County and had to file a police report.
7 Because they had stole some tools, credit cards, and
8 everything. That was it.

9 MR. MERRILL: Okay. And so, you filled out an
10 insurance statement for your mother?

11 PROSPECTIVE JUROR: Yes.

12 MR. MERRILL: Okay. All right. Did you call
13 law enforcement at all?

14 PROSPECTIVE JUROR: No. We were just trying to
15 get some money back for it. She was -- she was so out.
16 She wouldn't know what it would have been. I here --
17 couldn't have been police report.

18 MR. MERRILL: Sure. Thank you.

19 I saw a bunch of other hands.

20 Yes, sir, here in?

21 PROSPECTIVE JUROR: Joshua Gray.

22 MR. MERRILL: Thank you. And have you had
23 opportunity or?

24 PROSPECTIVE JUROR: Yes, police report for an

1 auto accident.

2 MR. MERRILL: Okay. And when was that?

3 PROSPECTIVE JUROR: Probably four or five years
4 ago.

5 MR. MERRILL: And was that a statement for
6 sheriff's office.

7 PROSPECTIVE JUROR: Yeah, for Reno PD.

8 MR. MERRILL: And how was your interaction with
9 Reno PD?

10 PROSPECTIVE JUROR: No complaints. It was
11 painless. It was smooth. Gave me the report, took it,
12 and that was it.

13 MR. MERRILL: Okay.

14 Thank you. And a few more hands here.

15 Ma'am, what's your name?

16 PROSPECTIVE JUROR: Rebecca Parsons.

17 MR. MERRILL: Ms. Parsons.

18 PROSPECTIVE JUROR: I've been in like three
19 auto accidents not my fault.

20 MR. MERRILL: That's what everybody says.

21 PROSPECTIVE JUROR: And also, somebody was
22 harassing my son that I was a witness to. And then I
23 had another subject try to steal my dad's property in
24 Elko, but we completed it here and forwarded on to

1 Elko.

2 MR. MERRILL: Okay. Thank you.

3 And I know there were a few others.

4 Ma'am, right --

5 PROSPECTIVE JUROR: Auto accident.

6 MR. MERRILL: And what's your name? I'm sorry.

7 PROSPECTIVE JUROR: Misty Rogers.

8 MR. MERRILL: Okay. Thank you. Ms. Rogers.

9 PROSPECTIVE JUROR: Auto accident in 2006.

10 (Inaudible.)

11 MR. MERRILL: And I'm sorry, I didn't hear the
12 last part.

13 PROSPECTIVE JUROR: For insurance purposes.

14 MR. MERRILL: For insurance purposes. Okay.

15 Now, those have -- those...

16 THE COURT REPORTER: Maybe they could take
17 their masks off when they talk and talk loud?

18 MR. MERRILL: If I could have everyone just
19 maybe speak up a little bit. We got the -- we have
20 masks and because I'm talking, I need to take my mask
21 off, I suppose.

22 So, now, was there somebody else that raised
23 their hands?

24 Yes, sir, in the suit.

1 PROSPECTIVE JUROR: I do insurance reports for
2 my job all the time for vehicle damage.

3 MR. MERRILL: Okay. And how are you employed?

4 PROSPECTIVE JUROR: I own and operate a small
5 business doing commercial refrigeration and HVAC work.

6 MR. MERRILL: I see. And when was the last
7 time you had to report something to the insurance?

8 PROSPECTIVE JUROR: Two weeks ago.

9 MR. MERRILL: Okay. Was that here in
10 Lyon County?

11 PROSPECTIVE JUROR: Washoe County.

12 MR. MERRILL: In Washoe County? Okay.

13 Did you have to call out law enforcement at
14 all?

15 PROSPECTIVE JUROR: No, typically we don't need
16 to.

17 MR. MERRILL: Okay. Now, when you filled out
18 that report, did you take your time filling that report
19 out?

20 PROSPECTIVE JUROR: Yes. We're very thorough.

21 MR. MERRILL: Okay. Were there things that you
22 wish you would have put in that report or in that
23 statement that you remembered after the fact?

24 PROSPECTIVE JUROR: No, sir.

1 MR. MERRILL: Okay. Was there anyone else that
2 had to fill out a police report or insurance report
3 that left out things out their statement, the initial
4 statement?

5 Yes. Ma'am in the back. What's your name?

6 PROSPECTIVE JUROR: Jacklyn Rew.

7 MR. MERRILL: Ms. Rew.

8 PROSPECTIVE JUROR: I was rear-ended by a drunk
9 driver with a minor in his vehicle in 2010, and she was
10 about ten. And it was really, really early in the
11 morning, and I remembered the following day the
12 specifics about the license plates.

13 MR. MERRILL: Okay. And Ms. Rew, did you fill
14 out a statement the day that it happened?

15 PROSPECTIVE JUROR: Yes.

16 MR. MERRILL: Okay. If I'm understanding you
17 right, you didn't have the license plate or didn't
18 remember the license plate at the time you wrote the
19 statement?

20 PROSPECTIVE JUROR: Correct.

21 MR. MERRILL: Now, when you left out that
22 specific information out of that report and you
23 remembered the details later, were you being untruthful
24 when you made that initial statement?

1 PROSPECTIVE JUROR: No.

2 MR. MERRILL: And why do you say that?

3 PROSPECTIVE JUROR: Because it wasn't a lie. I
4 honestly couldn't remember the license plate at
5 2:00 a.m. after being rear-ended.

6 MR. MERRILL: Okay. Thank you.

7 Now, has anyone here, by show of hands, ever
8 been in a car accident or broken any bones? I
9 fortunately have not broken any bones, so.

10 Ma'am, let's start with you. What's your name?

11 PROSPECTIVE JUROR: Heather Pauly.

12 MR. MERRILL: Heather. And were you involved
13 in an accident or do you have any broken bones?

14 PROSPECTIVE JUROR: I was in a quad accident
15 four years ago. I have had several broken bones over
16 those years. I do not have any broken bones in that
17 accident.

18 MR. MERRILL: Okay.

19 PROSPECTIVE JUROR: I don't know if that's what
20 you were asking. So, sorry.

21 MR. MERRILL: So, this was a quad, like an ATV?

22 PROSPECTIVE JUROR: Yes.

23 MR. MERRILL: And what happened with that, if
24 you don't mind sharing?

1 PROSPECTIVE JUROR: I was -- I work for a
2 conservation district, and we were on a ranch. And I
3 was driving down a road, and there were fields off to
4 my side, and I was looking for a co-worker. And I was
5 distracted looking for my co-worker, and I ran into a
6 water pump or irrigation.

7 MR. MERRILL: And were you injured at all?

8 PROSPECTIVE JUROR: I had almost dislocated my
9 right hip. I had bruises. Besides that, I was okay.

10 MR. MERRILL: Okay. And what was your response
11 like after, immediately after the accident? Did you
12 remember to call police or did you remember to call a
13 co-worker or anything like that?

14 PROSPECTIVE JUROR: I contacted my co-worker.
15 We headed back. My mom met me at my place of work, and
16 I was immediately transported to the hospital here,
17 South Lyon.

18 MR. MERRILL: South Lyon here. Okay.

19 And right after the accident, were you able to
20 think clearly?

21 PROSPECTIVE JUROR: Yes.

22 MR. MERRILL: At that point?

23 PROSPECTIVE JUROR: Yes.

24 MR. MERRILL: Okay. Thank you.

1 And there's a few, quite a few other shows of
2 hands.

3 Let's begin here, sir. What's your name again?
4 I apologize.

5 THE COURT: Mr. Merrill?

6 MR. MERRILL: Yes.

7 (Discuss at the bench with Mr. Merrill and the
8 Court.)

9 THE COURT: Mr. Merrill, before you start
10 again.

11 Mr. Kalter?

12 (Discussion at the bench among Court and
13 counsel.)

14 MR. MERRILL: Would everyone agree that
15 individuals react differently following a traumatic
16 event? Is there anyone, by a show of hands, that does
17 not agree with that statement?

18 Does anyone here object for any reason,
19 religious or otherwise, to judging others? By show of
20 hands, anyone?

21 Thank you.

22 Does anyone here feel unable or unqualified to
23 determine which opinions are right and which ones are
24 wrong? By show of hands?

1 That's nobody. Thank you.

2 Has anyone here, either themselves or somebody
3 close to themselves, had any training or experience in
4 any kind of sexual assault or rape counseling, or
5 domestic violence?

6 Yes, ma'am. And what's your name again? I
7 apologize.

8 PROSPECTIVE JUROR: Rebecca Parson.

9 MR. MERRILL: Rebecca Parson.

10 PROSPECTIVE JUROR: I have not, but my husband
11 is a retired --(inaudible.)

12 THE COURT REPORTER: I don't know if it's -- I
13 can't even hear.

14 THE COURT: Can you get her a mic?

15 Ms. Parsons, it's very hard to hear you. So,
16 we're going to have to mic you up here real quick so we
17 can hear you a little better.

18 PROSPECTIVE JUROR: My husband, he is retired,
19 previously between -- for Lyon County, for domestic
20 violence was one of the things that he was taught.

21 MR. MERRILL: Okay. So, your husband actually
22 did some of the training?

23 PROSPECTIVE JUROR: Yes.

24 MR. MERRILL: Okay. Did he ever share with you

1 some of the training that he would provide?

2 PROSPECTIVE JUROR: No, but I think I've taken
3 some classes through our -- because I was a former law
4 enforcement.

5 MR. MERRILL: Okay.

6 PROSPECTIVE JUROR: Years ago.

7 MR. MERRILL: And so, you also took some
8 classes on domestic violence?

9 PROSPECTIVE JUROR: Correct.

10 MR. MERRILL: Okay. What about sexual assault,
11 or rape, or anything of that nature?

12 PROSPECTIVE JUROR: Just within normal frame.

13 MR. MERRILL: Okay. Now, any of -- any of that
14 training that you had, will that -- will that effect
15 you in any regards in this case?

16 PROSPECTIVE JUROR: No.

17 MR. MERRILL: Okay. You'll be able to put that
18 training away and listen to the facts and the evidence
19 here in this case?

20 PROSPECTIVE JUROR: Correct.

21 MR. MERRILL: Okay. Thank you.

22 Yes. Ma'am, again, I apologize, but your name?

23 PROSPECTIVE JUROR: Heather Pauly.

24 MR. MERRILL: Heather Pauly.

1 PROSPECTIVE JUROR: My mom, for several years,
2 was a CASA for I believe -- thank you.

3 My mother was a CASA for Lyon County. She was
4 a child -- anyway, she worked with children in cases
5 being taken away from their parents or questioning
6 their parents' rights to have them. So, she saw many
7 cases and had training on different abuses of children
8 and signs of what to look for.

9 MR. MERRILL: Okay. And that was your mom?

10 PROSPECTIVE JUROR: Yes.

11 MR. MERRILL: Did she come home and share with
12 you at all specifics about cases?

13 PROSPECTIVE JUROR: No. No.

14 MR. MERRILL: Did she come home and talk about
15 any of the trainings or classes she had?

16 PROSPECTIVE JUROR: Some of the trainings, she
17 would let us know that she went to. There were certain
18 people in town that she would avoid because of the
19 cases, mostly the parents. I don't know any of those
20 people. She never really shared names or anything with
21 us. My father, who has passed away, he was also a
22 correctional officer at the facility in Silver Springs.
23 But he has since passed away, so.

24 MR. MERRILL: Okay. So, the facility in Silver

1 Springs, is that the new --

2 PROSPECTIVE JUROR: (Inaudible.)

3 MR. MERRILL: -- facility? Okay.

4 And how long ago did he pass away?

5 PROSPECTIVE JUROR: Almost four years ago.

6 MR. MERRILL: Okay. Anything about what your
7 mother did or what your father, that impact you at all?

8 PROSPECTIVE JUROR: No.

9 MR. MERRILL: Okay. You'd be able to sit fair
10 and impartial --

11 PROSPECTIVE JUROR: Yes.

12 MR. MERRILL: -- as a juror? Okay.

13 Ladies and gentlemen, that's all my questions.

14 Again, thank you.

15 THE COURT: Thank you, Mr. Merrill.

16 Mr. Kalter, do you have any inquiry?

17 MR. MERRILL: Yes, Your Honor.

18 THE COURT: Okay. Please, proceed.

19 MR. KALTER: Thank you.

20 Good morning once again, ladies and gentlemen.

21 I thank you for your service here today and potentially
22 throughout this week.

23 This is one of the few times that I get to talk
24 directly with you, and this is one of my favorite times

1 in a trial. However, if I come across any of you in a
2 hallway or in the bathroom in the courthouse and I'm
3 looking away from you, it's not because I don't like
4 you guys. We're just supposed to not interact with
5 jurors during the trial. So, that's what's happening
6 there. I'm not allowed to you in situations like that.

7 The whole point of this jury selection process,
8 it boils down to fairness in that both sides, the State
9 Mr. Merrill, deserve 12 fair jurors, and so doesn't
10 Mr. Bernal. And that is what we're attempting to do
11 here, is get fair jurors for this particular trial.

12 I want to talk a little bit about the justice
13 system and Judge told you about the presumption of
14 innocence. Does anyone sitting here right now not
15 presume or is incapable of presuming Mr. Bernal to be
16 innocent of the offenses he's been charged with? Does
17 anyone have a problem with that notion?

18 For the record, no hands went up.

19 You heard the instruction and the definition of
20 beyond a reasonable doubt. Again, does anyone think
21 the State should not have to prove its case beyond a
22 reasonable doubt?

23 No. No hands went up.

24 Now, if you were sitting in the State's shoes

1 or in Mr. Bernal's shoes, would any of you be
2 uncomfortable with 12 jurors made you up of a
3 personality like yourself? Would you be comfortable if
4 you were in Mr. Bernal's shoes that 12 people like
5 yourself were going to be fair to him?

6 PROSPECTIVE JUROR: I would.

7 MR. KALTER: Okay. Thank you.

8 And to be fair, how about the State? Do you --
9 does everyone believe that if there was 12 jurors made
10 up with people just like yourself, that you could be
11 fair to the State and Mr. Merrill? Does anyone not
12 think that?

13 No hands have gone up.

14 So, now I want to shift the subject matter to
15 teenagers. I don't know if many of you have teenage
16 children. But do you -- if you -- strike that.

17 Do any of you believe that a teenager, not
18 necessarily yours, but any teenager could never lie?
19 Would never not tell the truth? Does anyone think
20 that, that all teenagers always tell the truth? All
21 right.

22 Now, does anyone have such strong convictions
23 that they think a teenager could never lie or fabricate
24 an allegation of sexual assault?

1 Does anyone think a teenager -- in no
2 circumstances, could a teenager fabricate that or make
3 it up?

4 For the record, no hands have gone up.

5 A number of you disclosed that you're either
6 married to or have family members in law enforcement.
7 Does anyone feel so strongly that just because a law
8 enforcement officer testified to this, that he is
9 automatically more correct than another witness, a
10 civilian witness, that testifies slightly differently?
11 Okay.

12 Does everyone here agree to listen to each and
13 every witness, whether they're law enforcement or a
14 civilian, and judge what they're saying for what it is
15 and when considering all other relevant evidence in the
16 case?

17 Heads are nodding.

18 Does anyone here believe that in no
19 circumstance could a person that's being interrogated
20 give a false confession? Interrogated by law
21 enforcement, a false confession saying they did
22 something they in fact did not do, does anyone here
23 think that could never happen?

24 For the record, no hands have gone up.

1 Okay. Okay. Juror number 24, Ms. Baptist,
2 good morning.

3 PROSPECTIVE JUROR: Good morning.

4 MR. KALTER: Okay. Could you speak up too so
5 the court reporter can hear you?

6 THE COURT REPORTER: Thank you.

7 MR. KALTER: Thank you.

8 So, you had mentioned earlier on that you knew
9 several people in the DA's Office.

10 PROSPECTIVE JUROR: Yes.

11 MR. KALTER: Okay. How many? Who are they?
12 What is your relationship with them?

13 PROSPECTIVE JUROR: About nine of them, and
14 it's just being in the community.

15 MR. KALTER: Okay. Do you work in the
16 Lyon County's DA Office?

17 PROSPECTIVE JUROR: No.

18 MR. KALTER: Okay. So, are you -- would you
19 say acquaintances or close friends with them?

20 PROSPECTIVE JUROR: Acquaintances.

21 MR. KALTER: Acquaintances. Okay.

22 Well, let me get right to it. If the State
23 failed to prove the case beyond a reasonable doubt,
24 would any of those relationships give you pause to

1 acquit Mr. Bernal?

2 PROSPECTIVE JUROR: No.

3 MR. KALTER: Okay. You can see them the next
4 day at Dini's or --

5 PROSPECTIVE JUROR: Absolutely.

6 MR. KALTER: -- and they -- and you would be
7 okay, you'd be fine?

8 PROSPECTIVE JUROR: Yes.

9 MR. KALTER: Okay. Thank you for sharing.
10 In the back, Ms. Porter? Can you hear me okay?

11 PROSPECTIVE JUROR: Fine.

12 MR. KALTER: I'm making the bailiff run all
13 around now.

14 Sorry about that.

15 You had divulged that one of your co-workers I
16 believe had been charged with sexual assault?

17 PROSPECTIVE JUROR: That's correct.

18 THE COURT: Okay. If I understood correctly,
19 you really weren't involved with that in any way?

20 PROSPECTIVE JUROR: He was a co-worker that we
21 met up with outside of work now and then to watch, you
22 know -- have barbecues or something like that. He had
23 two small children that were similar in age to my
24 children. I wasn't involved in witnessing any of the

1 interactions between the two of them. I wasn't
2 involved in the hearing or testifying in any form.

3 MR. KALTER: Okay. So, despite that
4 experience, you can be fair to the State and
5 Mr. Bernal?

6 PROSPECTIVE JUROR: I believe I could, yes.

7 MR. KALTER: Okay. Do you have any reservation
8 about that?

9 PROSPECTIVE JUROR: No, sir.

10 MR. KALTER: Okay.

11 Juror number three, Mr. Hughes? Hello. Good
12 morning, sir.

13 PROSPECTIVE JUROR: Good morning.

14 MR. KALTER: You had indicated that your father
15 retired in law enforcement and now works for the DA's
16 Office I think in California somewhere?

17 PROSPECTIVE JUROR: Yes, in the Bay area.

18 MR. KALTER: Okay. And other law enforcement
19 officials are in your family, right?

20 PROSPECTIVE JUROR: That's correct.

21 MR. KALTER: Okay. I just want to make sure
22 that you believe you can be fair to both sides in this
23 case. You had stated currently there were no issues
24 that caused you concerns. Is there anything you could

1 foresee of concern?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Okay. Thank you for sharing.

4 PROSPECTIVE JUROR: Thank you.

5 MR. KALTER: Ms. Jones? Hi.

6 I'm trying not to zig-zag back and forward for
7 our bailiff here. So, I'm jumping around a little bit.
8 All right.

9 You worked or currently do work in the
10 Department of Corrections?

11 PROSPECTIVE JUROR: Yes, sir.

12 MR. KALTER: Tell me about that. What do you
13 do there?

14 PROSPECTIVE JUROR: I've been there for over
15 20 years. I was a correctional officer for 15 and a
16 half years. Now I am correctional caseworker
17 specialist.

18 MR. KALTER: So, you --

19 PROSPECTIVE JUROR: For five.

20 MR. KALTER: Okay. So, as a caseworker
21 specialist, you work with inmates and --

22 PROSPECTIVE JUROR: Yes.

23 MR. KALTER: -- stuff? And what types of stuff
24 does that involve, helping them get --

1 PROSPECTIVE JUROR: Classification, courts,
2 parole boards, due process hearings, disciplinary
3 hearings.

4 MR. KALTER: So, I'm sure -- I'm sure you've
5 heard countless stories from your various inmates that
6 have been assigned to you. Is there anything about
7 that that would make it hard for you to be fair here?

8 PROSPECTIVE JUROR: No.

9 MR. KALTER: Okay. If the State didn't prove
10 its case, you would find Mr. Bernal not guilty?

11 PROSPECTIVE JUROR: Can you repeat that?

12 MR. KALTER: Sure. If the State did not prove
13 its case beyond a reasonable doubt, would you be
14 willing to find Mr. Bernal not guilty?

15 PROSPECTIVE JUROR: I would be impartial.

16 MR. KALTER: So, is that a yes?

17 PROSPECTIVE JUROR: Yes.

18 MR. KALTER: Okay. All right.

19 Ms. Parsons?

20 PROSPECTIVE JUROR: Yes.

21 MR. KALTER: Good morning, ma'am.

22 PROSPECTIVE JUROR: Good morning.

23 MR. KALTER: Okay. Your husband is currently
24 still working for Lyon County Sheriff?

1 PROSPECTIVE JUROR: No, he's retired.

2 MR. KALTER: Okay. Congratulations.

3 And you still work as a 911 operator?

4 PROSPECTIVE JUROR: Correct. Not in this
5 county.

6 MR. KALTER: Oh. Where do you work?

7 PROSPECTIVE JUROR: Storey.

8 MR. KALTER: Got it. Okay.

9 Between your marriage with your husband, as
10 well as, I'm sure, the thousands and thousands of calls
11 you have received, is there anything about those
12 experiences that would make you tend to side one way or
13 another before hearing any evidence?

14 PROSPECTIVE JUROR: No. I think I'm pretty
15 partial.

16 MR. KALTER: Okay. So, if the State didn't
17 prove its case and you found Mr. Bernal not guilty,
18 would you be able to come home at night?

19 PROSPECTIVE JUROR: Absolutely.

20 MR. KALTER: Okay. So, there's nothing about
21 that that would case you any kind of strife?

22 PROSPECTIVE JUROR: No.

23 MR. KALTER: Okay. Thank you.

24 Okay. Number 27, Ms. Lett? Hey, how are you?

1 PROSPECTIVE JUROR: Good. How are you?

2 MR. KALTER: I doing good. Thank you.

3 Your husband is a -- is he CO up in Placer or
4 is he sheriff?

5 PROSPECTIVE JUROR: It's my cousin, and he's a
6 sheriff.

7 MR. KALTER: Okay. How close are you with your
8 cousin?

9 PROSPECTIVE JUROR: We're cousins. We see each
10 other on holidays.

11 MR. KALTER: Sounds like about my cousins.

12 So, there's nothing about that that would cause
13 you to not to be fair to both sides?

14 PROSPECTIVE JUROR: No.

15 MR. KALTER: Ms. Jamison? Hi.

16 PROSPECTIVE JUROR: Hi.

17 MR. KALTER: Thank you. Thank you for being
18 here today.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: You were very brave and divulged
21 the facts -- the fact that you had been a victim in the
22 past, but you felt that you could be fair in this case?

23 PROSPECTIVE JUROR: I believe I could.

24 MR. KALTER: Okay. Do you think there's

1 anything about your experience as a victim that would
2 cause you to be distracted from listening to the
3 evidence as it's coming in this case?

4 PROSPECTIVE JUROR: I carried it for a long
5 time, many, many years. And I finally kind of let it
6 all go. I think I could be partial in this.

7 MR. KALTER: Okay. Do you -- you heard my
8 question about whether a teenager could fabricate or
9 make something like this up. Do you have any qualms
10 with that that's a possibility?

11 PROSPECTIVE JUROR: No. I believe that's a
12 possibility.

13 MR. KALTER: Okay. Thank you for being candid
14 with us.

15 Okay. Number 28, Ms. Pauly. How you doing?

16 PROSPECTIVE JUROR: Good.

17 MR. KALTER: You get all the questions, huh?

18 All right. So, do you have any family members
19 that aren't in law enforcement?

20 PROSPECTIVE JUROR: A few.

21 MR. KALTER: Okay. So, you -- and then your
22 mom worked for CASA?

23 PROSPECTIVE JUROR: Yup.

24 MR. KALTER: So, you've heard lots of stories,

1 maybe not names or people, but just different?

2 PROSPECTIVE JUROR: Not too much. (Inaudible.)

3 MR. KALTER: Can you speak up just a little
4 bit?

5 PROSPECTIVE JUROR: Yeah. Not too many. She
6 really didn't share with us about the cases. Every
7 once in a while we'd meet some of the kids when she
8 would have to do an emergency transport with them.

9 MR. KALTER: Uh-hum.

10 PROSPECTIVE JUROR: Like I said earlier, there
11 were some times we'd be in the store and she would
12 redirect us down a different aisle because she had
13 i8recognized somebody from a case that she -- -o9MR.

14 KALTER: So --

15 PROSPECTIVE JUROR: -- didn't want to conflict
16 with.

17 MR. KALTER: So, let me get right to it.

18 Is there anything about those experiences or
19 that you have so many family members in law enforcement
20 that makes you think you might not be able to be fair
21 to both sides?

22 PROSPECTIVE JUROR: No.

23 MR. KALTER: You can be fair?

24 PROSPECTIVE JUROR: Yes.

1 MR. KALTER: Okay.

2 Mr. Coon in the back. How are you, sir?

3 PROSPECTIVE JUROR: I'm good, thank you.

4 MR. KALTER: So, you -- do you still work at
5 the jail?

6 PROSPECTIVE JUROR: No, sir. I work for the
7 Department of Health.

8 MR. KALTER: Okay. What do you do?

9 PROSPECTIVE JUROR: I'm a psych nurse.

10 MR. KALTER: Okay. Great.

11 And you were working -- or what time period
12 were working here at Lyon County?

13 PROSPECTIVE JUROR: It was just between 2015 to
14 20018. I didn't actually work here. I was -- any time
15 they would have an inmate that had a psychiatric issue
16 where they were suicidal, we would come in and assess
17 them to see if they were going to actually harm
18 themselves. And then we would write a short report and
19 come back and assess them when they were no longer
20 suicidal, and then they would be released from suicide
21 watch.

22 MR. KALTER: Okay.

23 PROSPECTIVE JUROR: I probably did that maybe
24 15, 20 times over that period.

1 MR. KALTER: Is there any -- is there anything
2 about your psychiatric profession that you think would
3 prohibit you from listening openly to both sides?

4 PROSPECTIVE JUROR: No, sir. I -- in my
5 profession I have to work with both the victim and the
6 victimizer on a daily basis.

7 MR. KALTER: Okay.

8 PROSPECTIVE JUROR: And have to be able to care
9 about both of them equally, so.

10 MR. KALTER: Okay. You feel that you can give
11 Mr. Bernal the presumption of innocence?

12 PROSPECTIVE JUROR: Mr. Bernal is somebody I
13 have no knowledge of, so until I know anything about
14 anything, he's just another person.

15 MR. KALTER: Okay.

16 Ms. Rizzo. Hey, how are you?

17 PROSPECTIVE JUROR: Good.

18 MR. KALTER: Where do you work?

19 PROSPECTIVE JUROR: I work for Lyon County
20 School District.

21 MR. KALTER: Okay. Are you a teacher?

22 PROSPECTIVE JUROR: I'm a substitute who tends
23 to work about five days a week. I'm actually currently
24 working as a paraprofessional sub for three special

1 needs kindergartners.

2 MR. KALTER: Wow. So, you're -- you
3 specialize -- is your substitute teaching mostly with
4 children?

5 PROSPECTIVE JUROR: Yes.

6 MR. KALTER: Okay. What age --

7 PROSPECTIVE JUROR: I've worked at Riverview
8 Elementary for the last four years.

9 MR. KALTER: Okay. Have you ever done teaching
10 in middle or high school?

11 PROSPECTIVE JUROR: No, I have not.

12 MR. KALTER: Okay. You certainly heard my
13 questions about teenagers and things like that. Is
14 there anything about your experience dealing with
15 slightly younger kids that would make you think they
16 have never not told the truth?

17 PROSPECTIVE JUROR: No.

18 MR. KALTER: All right.

19 PROSPECTIVE JUROR: I have a 12-year-old at
20 home *** too, so.

21 MR. KALTER: Okay. I appreciate you sharing
22 that with us.

23 Okay. That's it. Well, folks, I thank you for
24 giving me this opportunity to ask you questions. And

1 again, thank you for your service during this week and
2 amidst this pandemic and everything else. We
3 appreciate it.

4 THE COURT: Okay. Does the State have the
5 perspective jury for cause?

6 MR. MERRILL: Yes.

7 THE COURT: Defense passes prospective jury for
8 cause?

9 MR. KALTER: Yes, Your Honor.

10 THE COURT: Okay. Now, ladies and gentlemen,
11 we need to -- we're going to have call four more folks
12 up. We're going to select from those four two
13 alternate jurors. So, the first four chairs right
14 here, I'm going to ask you to take one of each of those
15 chairs.

16 So, if Madame Clerk, could you please call the
17 next four prospective jurors?

18 THE CLERK: Lloyd Smethers.

19 THE COURT: Right in the first one right there,
20 Mr. Smethers, would be perfect. Thank you.

21 THE CLERK: Debbie Book. Bunny Snider.
22 Jennifer Torres.

23 THE COURT: All right. So, for the alternates,
24 for the four alternates, first of all, are any of you

1 acquainted with any of the names that you heard from
2 the DA's Office or from the defense's office?

3 Yes, Mr. Smethers?

4 PROSPECTIVE JUROR: Mr. Kalter.

5 THE COURT: Okay. So, you know Mr. Kalter?

6 PROSPECTIVE JUROR: I know him, yes.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: I worked in the jail.

9 THE COURT: Okay. You used to work in the
10 jail?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. Is there anything about
13 that relationship with Mr. Kalter that would interfere
14 with your ability to listen to the evidence in this
15 case?

16 PROSPECTIVE JUROR: No, I could listen to him
17 eight hours a day, if need be.

18 THE COURT: Fair enough. Fair enough.

19 Hopefully we're not eight full hours with
20 Mr. Kalter.

21 PROSPECTIVE JUROR: *** He's a good guy.

22 THE COURT: Okay. Hopefully we'll hear from
23 some other people during the course of this.

24 All right. So, anybody familiar with the

1 defendant at all? Anybody heard anything about this
2 case?

3 Okay. Mr. Smethers, apparently you know some
4 law enforcement officers.

5 Anybody else familiar with any law enforcement
6 officers in a personal level?

7 Yes, Ms. Torres?

8 PROSPECTIVE JUROR: Yes, my cousin works for
9 LAPD.

10 THE COURT: Your cousin works for LAPD?

11 PROSPECTIVE JUROR: Yeah.

12 THE COURT: Okay. Is there anything about that
13 relationship that would prevent you from listening to
14 the evidence in this case and coming to your own
15 independent determination?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: Your Honor?

19 THE COURT: Yes, Mr. Smethers?

20 PROSPECTIVE JUROR: I know Deputy Messman,
21 Deputy Dues, and Deputy Greenhut.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR: Maybe on a personal level
24 because I helped train them in the jail when they --

1 when they were there.

2 THE COURT: Oh. Okay. Are you still working
3 in the jail?

4 PROSPECTIVE JUROR: No, sir. I'm retired.

5 THE COURT: You're retired. All right.

6 So, do you like camp out with them and barbecue
7 with them and those kinds of things?

8 PROSPECTIVE JUROR: No. I had Deputy Dues work
9 on my computer one time, and I reimbursed him with
10 various items.

11 THE COURT: Okay. So, is there anything
12 specific about that relationship where you couldn't
13 listen to their testimony in light of all the other
14 testimony and make a determination as to what happened
15 in this matter?

16 PROSPECTIVE JUROR: I'd be biased against the
17 individual.

18 THE COURT: All right. Fair enough.

19 Okay. Mr. Merrill, you have any questions?

20 MR. MERRILL: No, Your Honor.

21 THE COURT: Mr. Kalter?

22 MR. KALTER: No.

23 THE COURT: All right. You're excused,
24 Mr. Smethers.

1 PROSPECTIVE JUROR: Thank you. Have a good
2 day.

3 THE COURT: Thank you.

4 Please call the next prospective juror.

5 THE CLERK: Patrick McKay.

6 THE COURT: Mr. McKay, do you know anybody
7 involved in the case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Do you know any law enforcement?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Does anybody out there have any
12 bias against the State or the defendant in this case?

13 Does anybody know any of the prospective -- or
14 potential prospective witnesses that were listed?

15 Have any of you ever served on a jury before?

16 Ms. Snyder, was that a criminal jury or a civil
17 jury?

18 PROSPECTIVE JUROR: Criminal.

19 THE COURT: Okay. Without telling me what the
20 verdict was, did you reach a verdict?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. Was there anything in
23 relation to that matter that would prevent you from
24 listening to the evidence in this case?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Okay. Thank you.

3 Does any juror have any health, business, or
4 personal reason that would interfere with their ability
5 to serve as an impartial juror? Everybody good? Okay.

6 So, at the conclusion of the evidence I'll
7 state to you the law applicable to this case. I will
8 instruct you that it's your duty to apply the law to
9 the facts as found by you. Would any juror be
10 reluctant to apply the general principles of law which
11 I state to you? You'll all follow what I tell you?
12 Thank you.

13 If the Court were to instruct you at the
14 conclusion of the case that a defendant is -- in a
15 criminal action is presumed to be innocent until the
16 contrary is proven beyond a reasonable doubt and in
17 case of a reasonable doubt as to whether a defendant's
18 guilt is satisfactorily shown, he is entitled to be
19 acquitted. Would each of you accept and follow that
20 instruction?

21 I would indicate they were nodding yes.

22 If the Court were to instruct you that a
23 reasonable doubt is one based on reason, it is not
24 possible doubt but is such doubt as would govern or

1 control a person in the more weighty affairs of life,
2 if in the minds of the juror, after the entire
3 comparison and consideration of all the evidence, are
4 in such a condition as they can say they feel an
5 abiding conviction of the truth of the charge, there is
6 not a reasonable doubt. Doubt to be reasonable must be
7 actual, not mere possibility or speculation.

8 Would each of you accept and follow that
9 instruction?

10 Once again, I would indicate that they're
11 nodding yes. That the jurors are nodding yes.

12 Does anybody have any personal knowledge about
13 this case?

14 Have any of you ever been a victim of any type
15 of sexual assault or know any or witness or any of
16 that.

17 Okay. So, Ms. Torres.

18 PROSPECTIVE JUROR: Yes. So, my friend was
19 sexually assaulted and so was my girlfriend.

20 THE COURT: Okay. Is there anything about --
21 and you were not personally involved with those?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. Is there anything about
24 those experiences that would prevent you from listening

1 to the evidence in this particular case?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Would you be able to listen to all
4 the evidence and then come to your own independent
5 determination as to what happened?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: And then follow the law as I give
8 it to you?

9 PROSPECTIVE JUROR: Uh-hum.

10 THE COURT: Okay. Thank you.

11 Anyone else? Okay.

12 So, Mr. Merrill, do you want inquire?

13 MR. MERRILL: Briefly.

14 Again, thank you for being here.

15 Would each of you agree that it's a true
16 statement? There are variations to an event when
17 retold to different people.

18 And everyone's nodding their heads in
19 agreement? Thank you.

20 Does anyone for religious reasons or otherwise
21 have any difficulty passing judgement on others?

22 And all heads are shaking no.

23 Does anyone have any special education as far
24 as either rapes, domestic battery, or sex assault goes?

1 Yes, Ms. Torres?

2 PROSPECTIVE JUROR: Yeah. So, I worked in
3 Child Welfare. So, I know -- I'm trained in domestic
4 violence and sexual assault.

5 MR. MERRILL: In both?

6 PROSPECTIVE JUROR: Yes.

7 MR. MERRILL: Okay. Is that for -- the
8 training for adults that that have been sexually
9 assaulted?

10 PROSPECTIVE JUROR: For kids.

11 MR. MERRILL: For kids?

12 PROSPECTIVE JUROR: For teenagers.

13 MR. MERRILL: For teenagers specifically.

14 Okay.

15 And when was the last time you engaged in some
16 training for that?

17 PROSPECTIVE JUROR: I believe the domestic
18 violence one was about like about two or three months
19 ago, as well as the sexual assault.

20 MR. MERRILL: Okay. Now, would you be able to
21 put that training away as you listen to the evidence --

22 PROSPECTIVE JUROR: Yes.

23 MR. MERRILL: -- here? Okay.

24 And you would be able to be fair and

1 impartial --

2 PROSPECTIVE JUROR: Yeah.

3 MR. MERRILL: -- as you sit? Okay. Thank you.
4 Yes, and Ms. Snyder?

5 PROSPECTIVE JUROR: Okay. I was an elementary
6 schoolteacher, so I've had training and know what to
7 look for in child abuse. And I am currently working at
8 the ROP Center for Girls who are troubled.

9 MR. MERRILL: Okay.

10 PROSPECTIVE JURORS: And so, we do receive
11 training on how to handle those who have been sexually
12 abused.

13 MR. MERRILL: Right. And that's here in town?

14 PROSPECTIVE JUROR: Yes.

15 MR. MERRILL: Okay. And when was the last time
16 you had training?

17 PROSPECTIVE JUROR: *** (Inaudible.)

18 MR. MERRILL: When was the last time you
19 training in sexual assault or domestic battery?

20 PROSPECTIVE JUROR: We have it every first of
21 every school year.

22 MR. MERRILL: Okay. And as part of that
23 training or your position, have you had to deal with
24 children or teenagers that have been sexually

1 assaulted?

2 PROSPECTIVE JUROR: Yes. But we don't do the
3 counseling part. We only do the teaching.

4 MR. MERRILL: Okay.

5 PROSPECTIVE JUROR: On the general subject.

6 MR. MERRILL: Right. And so, you don't -- you
7 don't ask questions of any of the potential victims or
8 not?

9 PROSPECTIVE JUROR: No.

10 MR. MERRILL: Okay. Anything about that
11 experience in particular or that training that you
12 would not be able to sit here and be fair and
13 impartial?

14 PROSPECTIVE JUROR: Huh-uh.

15 MR. MERRILL: Okay. Thank you.

16 And was there any you other hands raised?

17 Thank you for your time.

18 THE COURT: Mr. Kalter, you have any questions?

19 MR. KALTER: Just a few.

20 THE COURT: Yeah. Please, go ahead.

21 MR. KALTER: Good morning, folks. Were you --
22 were you able to hear all of my questions and
23 engagement with the other jurors over here?

24 For the record, everyone's masks are moving up

1 and down.

2 So, to that point, would any of you have
3 answered in the affirmative or raised your hand or did
4 anything pop out that you thought maybe you should
5 share with us? No? Nothing? Okay.

6 Ms. Snyder?

7 PROSPECTIVE JUROR: Yes.

8 MR. KALTER: Good morning. You were elementary
9 schoolteacher and now you're at ROP?

10 PROSPECTIVE JUROR: Yes. I retired from the
11 elementary school, and I just substitute at the ROP
12 Center.

13 MR. KALTER: Okay. You've heard what the
14 allegations are in this case?

15 PROSPECTIVE JUROR: Yes.

16 MR. KALTER: Do you think you could sit as a
17 fair and impartial person for both sides in this case?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: Okay. If the State didn't prove
20 its case beyond a reasonable doubt, you would have no
21 issue returning a not guilty verdict?

22 PROSPECTIVE JUROR: No.

23 MR. KALTER: And Ms. Book? How are you?

24 PROSPECTIVE JUROR: Good.

1 MR. KALTER: You haven't gotten to speak yet,
2 have you?

3 PROSPECTIVE JUROR: No.

4 MR. KALTER: Tell us about you. Where do --
5 where do you -- do you work? Are you retired?

6 PROSPECTIVE JUROR: Yeah, I work at In-N-Out
7 Burger.

8 MR. KALTER: In-N-Out Burger?

9 PROSPECTIVE JUROR: Yeah.

10 MR. KALTER: All right. Okay. That's all I
11 needed to know.

12 All right. And you can be fair and impartial
13 to both sides?

14 PROSPECTIVE JUROR: Yes, uh-hum.

15 MR. KALTER: All right. And lastly, Mr. McCoy?

16 PROSPECTIVE JUROR: McKay.

17 MR. KALTER: McKay. I apologize. Where do you
18 work?

19 PROSPECTIVE JUROR: I'm a manager for a water
20 utility.

21 MR. KALTER: Water utility?

22 PROSPECTIVE JUROR: Yeah.

23 MR. KALTER: Do you have children?

24 PROSPECTIVE JUROR: I have a nine-year-old.

1 MR. KALTER: Do you feel that you can be fair
2 to both sides?

3 PROSPECTIVE JUROR: Yes.

4 MR. KALTER: Thank you for sharing.

5 And lastly, Ms. Torres, good morning, ma'am.

6 So, do you work for Lyon County DCFS?

7 PROSPECTIVE JUROR: No. So, I'm a
8 diffident(phonetic) living worker in Carson.

9 MR. KALTER: Okay.

10 PROSPECTIVE JUROR: So, I work with teenagers
11 from ages 14 to 20.

12 MR. KALTER: Okay. You heard my question
13 previously about whether it's possible a child, a
14 teenager could possibly about an allegation of this
15 kind?

16 PROSPECTIVE JUROR: Yes.

17 MR. KALTER: And you have an open mind about
18 that?

19 PROSPECTIVE JUROR: Yes.

20 MR. KALTER: Okay.

21 Your Honor, I pass for cause.

22 Thank you, folks.

23 THE COURT: Okay. State passes for cause, the
24 alternates?

1 MR. MERRILL: Yes, Your Honor.

2 THE COURT: Again, the defense passes for
3 cause, the alternates?

4 MR. KALTER: Yes.

5 THE COURT: Okay. So, ladies and gentlemen,
6 we're going to take a recess here. It'll last, again,
7 about another 15 minutes or so.

8 For those folks that were not called and are
9 not passed for cause, you're excused. So, thank you
10 very much, folks. I appreciate your attendance.

11 For those of you that were passed for cause,
12 what we're going to do is we're going to take about a
13 15 minute recess. We're going to reconvene in the
14 courtroom. Try to keep spaced as best as you in the
15 courtroom because as soon as you come in, we're going
16 to pick -- we're going to tell you who got selected as
17 jurors in this case. So, try to stay as far apart from
18 each other as you possibly can.

19 Right now we're going to recess. We're going
20 to allow counsel to exercise their peremptory
21 challenges. So, I'm asking each of you to remain at
22 this point until the final jury is seated in this
23 matter.

24 Like I said, you've all been passed for cause,

1 and the attorneys will reduce you to 12 trial jurors
2 and two alternates. So, when we return to the
3 courtroom, like I said, just be seated in the gallery.
4 Try to maintain as best distancing as you can. We'll
5 get the 14 people up there, and we'll release the
6 others as soon as we possibly can. Okay?

7 So, we're in recess. Thank you.

8 Counsel, meet in chambers.

9 (RECESS.)

10
11 (In Court's chambers.)

12 THE COURT: Okay. Let the record reflect we're
13 back on the record in chambers to exercise peremptory
14 challenges. The jury being passed for cause by both
15 the State and the defense in State of Nevada versus
16 Thomas Bernal.

17 All right. So, for the exercise of peremptory
18 challenges in this particular matter, the State would
19 exercise its first peremptory challenge.

20 MR. MERRILL: People would like thank and
21 excuse juror number six.

22 THE COURT: Barbara Ustica, juror number six is
23 excused.

24 Okay. Defendant's first?

1 MR. KALTER: The defense would thank and excuse
2 juror number 22, Ms. Parsons.

3 THE COURT: Okay. Jury number 22,
4 Rebecca Parsons is excused on peremptory challenge
5 number one by the defense.

6 Okay. State's second.

7 MR. MERRILL: People would like to thank and
8 excuse juror number eight, Keith McDaniel.

9 THE COURT: Okay. Juror number eight,
10 Keith McDaniel is excused, plaintiff's two.

11 Defendant's second?

12 MR. KALTER: The State -- the defense would
13 thank and excuse juror number 19, Ms. Jamison.

14 THE COURT: Okay. Defendant's two, juror
15 number 19, Peggy Jamison is excused.

16 Plaintiff's third peremptory?

17 MR. MERRILL: State would like to thank and
18 excuse Christopher McKibbins, juror number nine.

19 THE COURT: Juror number nine,
20 Christopher McKibbins, is excused as the plaintiff's
21 third peremptory.

22 Defendant's third?

23 MR. KALTER: Defense would thank and excuse
24 juror number 24, Ms. Baptist.

1 THE COURT: Okay. Ms. Baptist, juror number
2 24, is excused as defendant's third.

3 State's fourth?

4 MR. MERRILL: People would thank and excuse
5 juror number 13, Julio Garcia-Rojas.

6 THE COURT: Juror number 13,
7 Julio Garcia-Rojas, is excused as plaintiff's fourth
8 peremptory.

9 Defendant's fourth?

10 MR. KALTER: Defense would thank and excuse
11 juror number 12, Ms. Jones.

12 THE COURT: Juror number 12, Virginia Jones, is
13 excused as defendant's fourth peremptory challenge.

14 States fifth?

15 MR. MERRILL: People would like to thank and
16 excuse Laura Ward, juror number 15.

17 THE COURT: Juror number 15, Laura Ward, is
18 excused as State's fifth peremptory challenge.

19 Defendant's fifth?

20 MR. KALTER: The defense would thank and excuse
21 juror number 28, Ms. Pauly.

22 THE COURT: Jury number 28, Heather Pauly, is
23 excused as Defendant's fifth peremptory challenge.

24 State's six?

1 MR. MERRILL: State would like to thank and
2 excuse Misty Rogers, juror number 17.

3 THE COURT: Juror number 17, Misty Rogers, is
4 excused as State's number six peremptory challenge.

5 Defendant's six?

6 MR. KALTER: The defense would thank and excuse
7 juror number four, Ms. Rew.

8 THE COURT: Ms. Rew, juror number four, is
9 excused as defense sixth peremptory challenge.

10 State's seven?

11 MR. MERRILL: State would thank and excuse
12 juror number 25, Connal Berry.

13 THE COURT: Juror number 25, Connal Berry, is
14 excused as State's seventh peremptory.

15 Defendant's seven?

16 MR. KALTER: Defense would thank and excuse
17 juror number one, Ms. Porter.

18 THE COURT: Juror number one, Deborah Porter,
19 is excused as defendant's 7th peremptory challenge.

20 State's eighth?

21 MR. MERRILL: State would like to thank and
22 excuse juror number 16, Thomas Williams.

23 THE COURT: Juror number 16, Thomas Williams,
24 is excused as State's eighth peremptory challenge.

1 MS. SCHUMANN: What was that name? I'm sorry.

2 THE COURT: Thomas Williams.

3 MS. SCHUMANN: Okay. Thank you.

4 THE COURT: Juror number 16.

5 Okay. Defendant's eight?

6 MR. KALTER: Defense would thank and excuse
7 juror number five, Mr. Coon.

8 THE COURT: Gary Coon, juror number five, will
9 be excused as defendant's eight.

10 Okay. In relation to the alternate jurors,
11 States first? State's first and only?

12 MR. MERRILL: State would like to thank and
13 excuse Patrick McKay. I believe he was number one of
14 the alternates.

15 THE COURT: Yup. Plaintiff's one juror --
16 alternate juror number one, Patrick McKay, will be
17 excused as State's peremptory.

18 Mr. Kalter?

19 MR. KALTER: The defense would thank and excuse
20 Jennifer Torres. I think she was four.

21 THE COURT: Yeah, she was four. All right.
22 So, Jennifer Torres will be excused as the defendant's
23 peremptory.

24 All right. So, let's go through the jurors.

1 Juror number one, Angela Miller. Juror number
2 two, Chad Hughes. Juror number three, Aaron Taylor.
3 Juror number four, Jonathan Staab. Juror number five,
4 Hillary Cole. Juror number six, Loretta Wilson. Juror
5 number seven, Joshua Gray. Juror number eight,
6 Eldawna Koch.

7 THE CLERK: We're on six.

8 THE COURT: What did I miss?

9 THE CLERK: I have Victoria Gold, number 21.

10 MR. KALTER: I do too.

11 THE CLERK: Am I wrong?

12 THE COURT: Oh, I'm sorry. Victoria Gould,
13 juror number eight. Juror number nine, Eldawna Koch.

14 All right. Something's wrong here. What's
15 wrong here? Did I miss somebody?

16 MR. KALTER: Well, we got three left. It would
17 go Berry, then Rizzo, then Lett.

18 MS. SCHUMANN: No, Berry --

19 THE COURT: No, Berry was struck.

20 MR. KALTER: Oh.

21 THE CLERK: Oh, we forgot Elizabeth Stix,
22 number ten.

23 THE COURT: Oh, yeah, we did.

24 THE CLERK: Sorry.

1 THE COURT: All right. Sorry. Yup.

2 THE CLERK: I missed her too.

3 THE COURT: All right. So, okay.

4 So, Stix is four, Staab is five, Cole is six,
5 Wilson is seven, Gray is eight, Gould is nine, Koch is
6 ten, and then Acacia Rizzo is 11. Brandi Lett would be
7 12.

8 On the alternates Debbie Book will be one.
9 Bunny Snyder will be two on the alternates.

10 All right. So, stipulate to the jury --

11 MR. MERRILL: Yes.

12 THE COURT: -- State? Defense?

13 MR. KALTER: Yes.

14 THE COURT: Okay. We'll call them in. Get
15 them up. I'll instruct them. We'll read the
16 Information after I give them about an hour's worth of
17 lunch. Do opening statements and then probably recess
18 for the day. All right?

19 MR. MERRILL: We're not going to get into the
20 first witness you're thinking?

21 THE COURT: Yeah. How long are -- how long are
22 your opening statements?

23 MR. MERRILL: Mine's only ten minutes.

24 MS. SCHUMANN: Ten minutes.

1 THE COURT: Oh, is that it?

2 MS. SCHUMANN: Yeah.

3 THE COURT: Well, then we can do a witness.

4 MR. MERRILL: Oh.

5 THE COURT: Because it's noon now, right? My
6 clock wasn't turned back. So, it's noon now. They'll
7 get out of here in about 15 minutes. We'll bring them
8 back at a quarter after 1:00. If you -- if you both
9 have only ten minute openings...

10 MR. MERRILL: My only concern is we're going to
11 be breaking probably during cross. So, the first
12 witness will be HS. I imagine her total direct will
13 probably with be about an hour.

14 MS. SCHUMANN: We've got about 30 minutes worth
15 of questions.

16 THE COURT: I think that would be fine.

17 MR. MERRILL: Okay.

18 THE COURT: You know, and if we need to -- I'll
19 check the time after the State's finished their
20 questioning. If I decide to do cross-examination
21 tomorrow, we'll do cross-examination tomorrow.

22 MS. SCHUMANN: Okay.

23 THE COURT: So, we'll just -- we'll just play
24 that by ear. But I don't want to send them home too

1 early either. But I'll play it by ear. You know, once
2 you finish your closing arguments -- your opening
3 statements rather. You know, I'll see where I'm going
4 to go from there at that point. So, a certain maybe in
5 relation to the first witness. Let's just kind of see
6 how it goes.

7 MR. MERRILL: Okay.

8 THE COURT: All right?

9 MR. MERRILL: All right.

10 THE COURT: So, let's reconvene and get
11 everybody that's not trying this case out of here.

12 So, go right into the courtroom, please.

13 We're in recess.

14 (Recess.)

15

16 (In open court.)

17 THE COURT: Okay. We're back on the record in
18 Case 20-CR-00099, State of Nevada versus Bernal. This
19 is time that we're going to seat the jurors.

20 So, Madame Clerk, please, call the jurors who
21 will try this matter.

22 THE CLERK: Angela Miller.

23 THE JUROR: Do I go up there?

24 THE COURT: Yes, Ms. Miller, come on up.

1 You're going to be the first seat in the back. In the
2 jury box. Come on in.

3 THE JUROR: (Inaudible.)

4 THE COURT: Yeah.

5 THE JUROR: Okay.

6 THE CLERK: All the way in.

7 THE COURT: Yeah, all the way around.

8 THE CLERK: Chad Hughes.

9 THE COURT: Come on up, Mr. Hughes. You will
10 be in the third seat on the top next to Ms. Miller.

11 THE CLERK: Aaron Taylor.

12 THE COURT: Mr. Taylor, come on up. The next
13 chair with the pad on it.

14 THE JUROR: Okay.

15 THE CLERK: Elizabeth Stix.

16 THE COURT: Ms. Stix, next one with the pad on
17 it.

18 THE CLERK: Jonathan Staab.

19 THE COURT: Mr. Staab, the last chair in that
20 section.

21 THE CLERK: Hillary Cole.

22 THE COURT: Ms. Cole, second chair in on the
23 bottom row.

24 THE CLERK: Loretta Wilson.

1 THE COURT: Ms. Wilson, you're going to be two
2 over from her. You can go this way.

3 THE JUROR: This way?

4 THE COURT: Either way.

5 THE JUROR: Okay.

6 THE COURT: Come on around this way. That's
7 fine.

8 THE JUROR: Okay.

9 THE CLERK: Joshua Gray.

10 THE COURT: And the next one with a pad on it,
11 Mr. Gray.

12 THE CLERK: Victoria Gould.

13 THE COURT: Ms. Gould, that's going to be the
14 last seat in that row. Okay?

15 THE CLERK: Eldawna Koch.

16 THE COURT: Ms. Koch, the first seat over
17 there.

18 THE CLERK: Acacia Rizzo.

19 THE COURT: Ms. Rizzo, right in the middle
20 there.

21 THE CLERK: Brandi Lett.

22 THE COURT: Ms. Lett, that final chair right
23 there.

24 Please call the alternates.

1 THE CLERK: Debbie Book.

2 THE COURT: Okay. Ms. Book, you get the whole
3 bench in the front. Well, you get half of it anyway.
4 Okay?

5 THE CLERK: Bunny Snyder.

6 THE COURT: Ms. Snyder, you get the other half
7 of the front bench.

8 Okay. So, ladies and gentlemen, for those that
9 haven't been called and are still seated outside the
10 bar, may now be excused from further attendance in this
11 trial. Any of you who wish, can always remain as
12 spectators as it is an open and public courtroom. So,
13 thank you, folks.

14 Okay. Ladies and gentlemen of the jury, I'd
15 now like to explain briefly the role each person in the
16 courtroom is to play during these proceedings.

17 You will at the conclusion of the evidence
18 determine the facts in the case, apply those facts to
19 the law, which will be stated to you by the Court, and
20 on that basis reach a verdict consistent with both the
21 facts and the law.

22 It is the duty of the attorneys to present
23 their respective cases in the most favorable light
24 consistent with the truth and the law. But statements

1 and arguments of counsel made during the trial are not
2 to be treated by you as evidence, except as to the
3 matters of fact which have been stipulated to by both
4 attorneys.

5 Keep an open mind. Refrain from forming or
6 expressing any opinion concerning the case until all
7 the evidence is in, the attorneys have made their
8 closing arguments, and you have received the Court's
9 instructions as to the law, and you have retired to the
10 jury room to find your verdict.

11 During the trial do not discuss the case
12 amongst yourselves or with any other person. Do not
13 allow anyone to speak of it in your presence. You are
14 not to read, listen to, or observe any newspaper,
15 radio, or television account of the trial, or go onto
16 social media to look up any of the events that might
17 have transpired during the entire progress of the
18 trial.

19 Not only must your conduct as jurors be above
20 reproach, but you must avoid even the appearance of any
21 improper conduct. Do not talk to the defendant, the
22 attorneys, or the witnesses during the trial even upon
23 matters unconnected with the case. And I hate to tell
24 you that includes me. So, if I do see one of you

1 walking around and I run the other way, like I said,
2 it's not because you smell bad or anything. It's
3 because that's just a rule of law. Okay?

4 The only person that you'll be entitled to
5 transmit any communication with will be the bailiff,
6 who will transmit that to the Court and counsel, both
7 of us. Okay? All of us. So, but you cannot have any
8 individual conversations, please, with anybody in the
9 courtroom, either from the State, or the defense, or
10 the Court itself except through the bailiff. Okay? Or
11 my law clerk.

12 So, you -- which is seated right there. So,
13 those will be the two folks that you can ask a question
14 to be transmitted, and that question will be
15 transmitted to both counsel before any answers are
16 made. Okay? If it's something about lunch or
17 something like that, that's different. But you can
18 talk to the bailiff about that, and we'll get into that
19 here in a minute. Okay?

20 Any rulings made by the Court during the course
21 of the trial will be based upon the controlling law of
22 the State of Nevada. Accordingly, you must not infer
23 any leaning on my part based upon such rulings or infer
24 any feelings on my part for or against either side of

1 the case.

2 If any objection to the admission of evidence
3 is sustained, you must not speculate as to what the
4 answer might have been or draw any inference from the
5 question itself. During the course of the trial
6 matters may arise which must be determined by me as
7 matter of law outside of the presence of the jury.
8 Again, you are not to speculate or be concerned in any
9 way as to the reasons for such occurrences. I assure
10 you that they will be as limited in frequency and in
11 duration as the law permits.

12 Observe carefully each witness as he or she
13 testifies and consider carefully all of the evidence as
14 it is presented for it is you who must determine the
15 credibility of the witnesses and wherein the truth lies
16 in this matter.

17 If during the examination of witnesses some
18 questions occur to you, be patient. The answers will
19 probably be given before the case is concluded. If
20 not, write your question on a slip of paper and hand it
21 to the bailiff during a recess. He or she will then
22 give it to me. The bailiff will then give it to me,
23 and if the question is a proper one under the law, I
24 will see that it gets answered.

1 At the end of the trial you will have to make
2 your decision based on what you recall of the evidence.
3 To assist you in your recall of the evidence, you may
4 individually take notes during the trial. For that
5 purpose you've been given or provided a pad and pencil
6 to take notes. You are cautioned however that in the
7 event that irreconcilable conflict between the notes of
8 individual jurors during the deliberations, you are not
9 to solely rely on your notes as the reporter's notes
10 contain the complete and authentic record of the trial.

11 You will not have a written transcript to
12 consult, and it is difficult and time consuming for the
13 reporter to read back lengthy testimony. So, I urge
14 you to pay close attention to the testimony as it is
15 given and avoid the necessity of a difficult and time
16 consuming re-backs by the court reporter.

17 Ladies and gentlemen, the clerk will now swear
18 you in and the alternates. So, if you could all please
19 rise and raise your right hand to be sworn by the
20 clerk.

21 (Jury and alternates sworn.)

22 THE COURT: Thank you. You can be seated.

23 Ladies and gentlemen of the jury, you are
24 admonished that no juror may declare to his fellow

1 juror any fact relating to this case as of his own
2 personal knowledge. And two, if any juror discovers
3 during the trial or after the jury has retired, that he
4 or she or any other juror has personal knowledge of any
5 fact in controversy in the case, he or she shall
6 disclose that situation to the bailiff outside the
7 presence of the other jurors, who will let the Judge
8 know.

9 You are to use the jury room during all short
10 recesses in the trial, the alternates too. So, any
11 time we recess, the first folks that are going to move
12 are the alternates. They'll move out. And then if
13 the -- well, you can -- all the jurors can go at the
14 same time. But I want the alternates in here without
15 anybody moving around so that they can get immediate
16 access to the jury room. Okay? Just so everybody's
17 clear on that.

18 So, all right. So, here's the fun part. If
19 you need anything for your personal comfort, all right,
20 during the course of the trial, just let the bailiff
21 know, and we will try to make every effort to
22 accommodate those requests.

23 If you need something special -- we're going to
24 have some snacks. Everything is going to be

1 pre-packaged for the most part, you know, because of
2 the whole COVID-19 situation. So, we usually have
3 fruit and vegetables and those kinds of things. But
4 we've been told that they don't recommend those things
5 being transferred and touched and those kinds of
6 things. But we do have pre-packaged things in there
7 for you. We'll have sanitary wipes in there that you
8 can wipe down. We give you each individual hand
9 sanitizers. If you need another one, let us know. We
10 will get you one.

11 Also, masks, especially the paper ones,
12 sometimes they get a little nasty. Even the cloth ones
13 get uncomfortable at times, your personal ones. If you
14 need another mask, we will provide you another mask.
15 You know, whatever you folks need, just let us know,
16 we're going to try to make this as seamless as possible
17 in light of the situation that we have.

18 We are going to ask that during the course of
19 the trial the jurors remain with their masks on. And I
20 know that that's sometimes becomes uncomfortable. You
21 will see that during the course of the trial the
22 majority of the time I will probably not have a mask on
23 because I'm always ruling on objections, I'm talking to
24 witnesses, I'm talking to counsel, et cetera,

1 et cetera.

2 Counsel is not required to wear a mask,
3 especially when they're questioning. The defendant
4 will always be -- have a mask on unless he testifies.
5 So, all those things will happen during the course of
6 this particular trial. Witnesses will be allowed to
7 take their mask off during their testimony, like I just
8 said. So, during any kind of testimony, the witnesses
9 will be more than able to take their mask -- take their
10 mask off. Okay?

11 So, otherwise, the rules even for counsel if
12 they approach the bench, if they approach a witness,
13 anybody else, if they approach the jurors, if they try
14 get within six feet of you folks, they're going to be
15 putting masks on. All right? So, even though they can
16 ask questions and do those types of things from counsel
17 table, they're still required to do that. All right?

18 So, at this point I'm going to -- oh, another
19 rule. When you report back to the court, report to the
20 jury room. Okay? Touch base with the bailiff or my
21 law clerk, tell them you're back, you know, from
22 whatever break we take. Like I said during the voir
23 dire -- and that's what we call jury selection. It's a
24 legal term. But we will try to break every hour to

1 hour and a half during the course of the trial, and we
2 are going to break early this afternoon.

3 So, when we get back from lunch, we'll kind of
4 play it by ear and see what the time is, but I want to
5 ensure that each and every one of you have the
6 opportunity to get out of here, get back to your
7 community, go to your precinct, do what you need to do
8 to record your votes. Okay?

9 So, even though the poles are open until 7:00,
10 there's no intention of this Court to keep you here
11 until 5:00. All right? So, like I said, we'll kind of
12 play it by ear, but I'm going to give you plenty of
13 time to get home. So, you don't have to worry about
14 that. All right?

15 Okay. So, now you're going to listen to
16 something that I'm going to give you probably 25 times
17 during the course of this trial, and it's called the
18 Criminal Jury Admonishment. And it's an admonishment
19 that the statutes and the courts of the State of Nevada
20 require that judges read each and -- in between each
21 and every recess.

22 You'll hear it a lot, but it's just a reminder
23 of some of the things that I just went over with you.
24 Once we do that, we'll break for lunch. We'll start

1 again at 1:30. I'll give you an hour and 15 minutes
2 for lunch. Okay?

3 But in the meantime, during the recess we're
4 about to take, you're admonished that it is your duty
5 not to discuss amongst yourselves or with anyone else
6 any matter having to do with this case. It is your
7 further duty not to form or express any opinion
8 regarding the guilt or innocence of the defendant until
9 the case has been finally submitted to you for your
10 decision.

11 You are not to read, view, or listen to any
12 report in the newspaper, radio, television, or the
13 Internet concerning this case. Nor allow anyone to
14 read or comment upon them to you or in your presence.
15 This includes viewing any type of social media in
16 relation to this case. You are not to investigate or
17 attempt to obtain any information about this case
18 outside the courtroom. Do not Google any crime scenes.
19 Do not Google any addresses. Do not Google any
20 individuals. Okay?

21 You are to rely solely on the evidence that's
22 presented to you during the course of this trial. Do
23 not visit the scene or attempt any investigation on
24 your own. Do not read any legal text or book regarding

1 any issue raised in court.

2 Should any person attempt to discuss the case
3 with you, or in any manner attempt to influence you
4 with respect to it, you are to advise the bailiff, who
5 will in turn advise the Court, and I will take care of
6 it, ladies and gentlemen.

7 Have a good lunch. Get back here about 20
8 after 1:00, and we'll get started.

9 Okay. So, let the alternates come through as
10 well. And the jurors can go in, but make sure that the
11 alternates gets through before anybody else.

12 And please remember your seats.

13 (Jury exits the courtroom.)

14 THE COURT: Okay. So, anything to bring up to
15 the Court?

16 MR. KALTER: No, Your Honor.

17 MR. MERRILL: No.

18 THE COURT: All right. So, we're in recess.
19 We'll read the Information right when we come back in
20 to session at 1:30. We'll get into opening statements,
21 and then, you know, I'll play it by ear at that point.

22 Okay. Court's in recess.

23 Oh, just one thing. I did have one bench
24 conference during the jury selection, and I know I

1 indicated to counsel to bring it up if they wanted to.
2 But I would just like to make a record. It is a life
3 felony in relation to that.

4 So, in relation to that, I just explained to
5 Mr. Merrill, and I invited Mr. Kalter up as well to
6 indicate what was going on, that due to COVID, we
7 didn't want to wait all day for certain questions that
8 really didn't go directly to bias. And I requested
9 that Mr. Merrill ask the questions directly related to
10 the bias in this particular case and how different
11 people reacted to different traumatic situations.

12 I let him ask that question. I had notified
13 Mr. Kalter of that. And I just asked counsel just to
14 get to the point. I'm not going to, you know, play
15 games with you guys in relation to getting to the point
16 that you wanted.

17 So, and I think both counsels -- and I'd like
18 to thank both counsel at this time for doing just that
19 after I had that little conversation with you. You
20 did. You got right to the point. You didn't waste
21 everybody's time. You asked the appropriate questions
22 in relation to fairness and bias. So, thank you very
23 much. And we will be back at 1:30.

24 Court's in recess.

1 Oh, first of all, is there any -- before we do
2 that. Was that a correct rendition of what happened at
3 the bench?

4 MR. MERRILL: Yes, Judge.

5 MR. KALTER: Yes, it is.

6 THE COURT: All right. Thank you.

7 In recess again.

8
9 (Lunch recess.)

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2 -000-

3 THE COURT: All right. You can be seated.

4 All right. So, is there anything to bring up
5 to the Court before we get started?

6 MR. MERRILL: No, Judge, we're ready to
7 proceed.

8 THE COURT: Anything by the defense before we
9 get started?

10 MS. SCHUMANN: No, Your Honor.

11 THE COURT: Okay. All right.

12 So, we're going to start off with the reading
13 of the Information, then we'll go into opening
14 statements, and then I'll kind of make the call. Okay?

15 All right. So, Madame Clerk, do you have clean
16 jury list?

17 THE CLERK: Not yet, Judge.

18 THE COURT: Okay. That's fine.

19 THE CLERK: Do you want -- do you want to look
20 at mine?

21 THE COURT: No, that's all right.

22 THE CLERK: Oh, okay. I haven't had time to
23 type it up yet.

24 THE COURT: Okay. All right.

1 So, you can bring in the jurors, please.

2 (Jury enters the courtroom.)

3 THE COURT: Does counsel stipulate to the
4 presence of the jurors?

5 MR. MERRILL: Yes, Your Honor.

6 MR. KALTER: Yes, Your Honor.

7 THE COURT: Okay. All right.

8 Good afternoon, ladies and gentlemen. Before
9 we getting go today, we need to review the official
10 charges in this particular matter. So, the clerk is
11 going to read what's called the Information filed by
12 the State in this case, and state to the jury what the
13 pleas were to that Information.

14 Madame Clerk, please, read the Information.

15 THE CLERK: In the Third Judicial District
16 Court of the State of Nevada in and for the County of
17 Lyon, State of Nevada, plaintiff, versus
18 Thomas Jason Bernal, defendant.

19 Steven B. Rye, District Attorney within and for
20 the County of Lyon, State of Nevada, in the name and by
21 the authority of the State of Nevada, informs the above
22 entitled Court that Thomas Bernal, the defendant above
23 named, has committed the offense of:

24 Count I, sexual assault on a child under the

1 age of 16 years, not causing substantial bodily harm,
2 in violation of NRS 200.366(3)(b), in the manner
3 follow -- in the following manner:

4 That the said defendant on or between the 1st
5 day of August, 2018, to the 30th day of June, 2019, at
6 and within the County of Lyon, State of Nevada, did
7 willfully and unlawfully subject another person who was
8 under the age of 16 years to sexual intercourse, and/or
9 fellatio, and/or other sexual penetration against her
10 will or under conditions in which the perpetrator knew
11 or should have known that the victim is mentally or
12 physically incapable of resisting or understanding the
13 nature of the conduct, to-wit: Defendant digitally
14 penetrated the vagina of known but unnamed juvenile,
15 HS, date of birth 7-20-2004, all of which occurred at
16 or near 610 US Highway 95 Alternate, Yerington, Nevada.

17 Count II, sexual assault on a child under the
18 age of 16 years, not causing substantial bodily harm,
19 in violation of NRS 200.366(3)(b) in the following
20 manner:

21 That the said defendant on or between the 1st
22 day of July, 2019, to the 14th day of July, 2019, at
23 and within the County of Lyon, State of Nevada, did
24 willfully and unlawfully subject another person who was

1 under the age of 16 years to sexual intercourse, and/or
2 fellatio, and/or other sexual penetration against her
3 will or under circumstances in which the perpetrator
4 knew or should have known that the victim is mentally
5 or physically incapable of resisting or understanding
6 the nature of the conduct, to-wit: Defendant digitally
7 penetrated the vagina of known but unnamed juvenile,
8 HS, date of birth 7-20-2004, all of which occurred at
9 or near 610 US Highway 95 Alternate, Yerington, Nevada.

10 Count III, sexual assault on a child under the
11 age of 16 years, not causing substantial bodily harm,
12 in violation of NRS 200.366(3)(b) in the following
13 manner:

14 That the said defendant on or between the 1st
15 day of December, 2018, to the 20th day of February,
16 2019, at and within the County of Lyon, State of
17 Nevada, did willfully and unlawfully subject another
18 person who is under the age of 16 years to sexual
19 intercourse, and/or fellatio, and/or other sexual
20 penetration against her will, or under conditions in
21 which the perpetrator knew or should have known that
22 the victim is mentally or physically incapable of
23 resisting or understanding the nature of conduct,
24 to-wit: Defendant digitally penetrated the vagina of a

1 known but unnamed juvenile, HS, date of birth
2 7-20-2004, while rubbing her legs, all off which
3 occurred at or near 610 US Highway 95 Alternate,
4 Yerington, Nevada.

5 All of which is contrary to the form, force,
6 and effect of the statute in such cases made and
7 provided and against the peace and dignity of State of
8 Nevada.

9 Dated this 26th day of October, 2020. Stephen
10 B. Rye, Lyon County District Attorney, by
11 Matthew K. Merrill, Deputy District Attorney.

12 The defendant entered pleas of not guilty to
13 each count.

14 THE COURT: So, ladies and gentlemen, we've now
15 reached the stage of the proceedings where the
16 attorneys may make their opening statements. The law
17 provides that the district attorney may make his
18 opening statement first. Defense counsel then may make
19 his opening statement or reserve it until the
20 conclusion of the State's evidence at their request.

21 So, Mr. Merrill, you may proceed with your
22 opening statement.

23 MR. MERRILL: Thank you, Judge.

24 "I went up her leg with CBD cream, and I

1 accidentally entered her. So, evidently I've been
2 fingering HS for -- since I think I said December. And
3 then went ahead and let it slip in once." Those are
4 the words spoken by this defendant, Thomas Bernal,
5 about his stepdaughter, HS, a teenager.

6 July 14th of 2019, Patricia Bernal, HS's mother
7 and married to the defendant, is working here in town
8 at Dini's Lucky Club. She received a text message from
9 the defendant. It states this. "K babe, but hurry
10 home please. We need to talk. Love you." That's
11 about 5:00 p.m. on July 14th of 2019.

12 So, what does Patricia do? Patricia gathers
13 her things, checks out at work, signs the books, signs
14 the time card, and drives straight home from Dini's
15 Lucky Club. She lives here in town as well, in the
16 Yerington area. She doesn't make any stops. She
17 drives straight on home. When she arrives home, she's
18 going to tell you what she saw. She's going to tell
19 you she saw the defendant's bags packed. She's going
20 to tell you that she saw HS, her teenaged daughter, in
21 the living room crying.

22 At that point the defendant and Patricia go
23 into the master bedroom. Inside the master bedroom
24 Patricia's going to tell you -- when she testifies here

1 during the course of the trial, she's going to tell you
2 that the defendant told her that he had been molesting
3 HS.

4 And in the defendant's words, he said this.
5 "And I shut the door. I said exactly what I said I
6 said. "So, evidently I've been fingering HS for --
7 since, I think December, or December because that's
8 when all this shit happened." And she goes, "Well, did
9 you do it?" "I went once on accident." Those are the
10 words of the defendant.

11 At that point there is more conversation,
12 perhaps some argument. Frankly, Patricia, at that
13 point, was not quite sure what to do. She's going to
14 tell you that. The defendant left with his bags
15 packed. Left the area. Left the house they were all
16 living in. Now, that was on the 14th of July, 2019.

17 Patricia, at that point, she still did not call
18 law enforcement. She was, again, frankly torn about
19 what to do. But on the 16th of July, two days
20 afterwards, she did call law enforcement. She reported
21 it. The deputy came out to her house, took an initial
22 report. After that initial report was taken, it was
23 referred to a detective, Detective Messman, who you'll
24 also hear from.

1 Now, who's HS? HS, she's now a 16-year-old
2 teenage girl. She attends high school. She has
3 classes that she likes. She has classes she doesn't
4 like. She has activities that she likes to do inside
5 school and outside of school. By all regards, she's a
6 typical teenage girl. Probably with a lot of things
7 going on in her life.

8 Typical by all accounts, except one. When she
9 would get home from school, the defendant would find
10 opportunities when he'd get her alone, typically in her
11 bedroom, begin massaging her legs. And as he would
12 massage her legs on occasion, he would digitally
13 penetrate her vagina with his finger.

14 You are going to hear from HS during the course
15 of the interview -- or the course of this trial, and
16 she's going to testify to you those exact things.
17 She's going to tell you that it happened at least three
18 times. She's going to tell you it, there's a course of
19 conduct that happened, where this rubbing took place.
20 The rubbing of her legs, and, again, on times the
21 defendant would penetrate her against her will.

22 Now, we're going to hear from Detective Messman
23 during the course of the trial here. Detective Messman
24 is going to testify to you that he had the opportunity

1 to interview the defendant. Came down to the
2 Silver Springs substation, had an interview with him.
3 Detective Messman's going to describe to you and tell
4 you what the defendant told him.

5 This interview was recorded, both audio and
6 video record. He's going to describe one instance to
7 you where the defendant described to him how HS was
8 alone, and he started rub -- massaging her legs down to
9 the ankles, and she had big, baggy pants on. And he
10 started at the bottom and worked his way up her leg.
11 Skin to skin contact, her pants are not in the way.
12 And on that occasion, he penetrated her vagina with his
13 finger.

14 Detective Messman is going to tell you, again,
15 these words. The defendant said, "And I shut the door.
16 I said exactly what I said I said. "So, evidently I've
17 been fingering HS for, since I think I said December.
18 Or December because that's when all this shit
19 happened." And she goes, "Well, did you do it?" I
20 went "Once on accident."" Quote the defendant, "So, I
21 went up her leg with CBD cream, and I accidentally
22 entered her. Okay?"

23 At the close of this trial, after you've heard
24 all the evidence, the judge is going to instruct you.

1 One of those instructions contains an instruction on
2 common sense. You don't have to leave your common
3 sense at the door when you come in here. I am
4 confident that when you've heard all the evidence, that
5 you will all come to the same conclusion, the defendant
6 is guilty beyond a reasonable doubt. Not only on one
7 count of sexual assault, not only two counts, but three
8 counts of sexual assault of HS, the defendant's
9 stepdaughter, beyond a reasonable doubt. Because
10 accidents like these, don't just happen. Thank you.

11 THE COURT: Mr. Kalter, you wish to make your
12 opening statement now or reserve it?

13 Or Ms. Schumann, I'm sorry?

14 MS. SCHUMANN: Yes, Your Honor, we'd like to
15 make it now.

16 THE COURT: Please, go right ahead.

17 MS. SCHUMANN: Thank you, Your Honor.

18 Good afternoon. First of all, I'd like to
19 thank you all for being here today. I know you're
20 making personal sacrifices to be here, and we
21 appreciate -- we appreciate it.

22 Now, my name is LeAnn Schumann, and along with
23 my co-counsel, Jesse Kalter, we have the privilege of
24 representing Mr. Thomas Bernal, the defendant in this

1 case.

2 Now, my job is to make sure you have all of the
3 facts in this case so you can make the best possible
4 decision. There's a lot of facts the State
5 intentionally didn't tell you because the State doesn't
6 want you to know Mr. Bernal's side of the story.

7 Now, let that me give you little information on
8 Mr. Bernal, who we'll be referring to as TJ throughout
9 this trial. TJ moved to Yerington in 1997. He
10 actually graduated from Yerington High School. He met
11 his wife, Patricia, in 2011. They eventually got
12 married in 2014.

13 Now, Patricia had two children from a previous
14 relationship. Those children had been taken away from
15 her. The children's names are HS and OS. Now, TJ
16 actually worked with Patty to buy a house to provide a
17 stable environment so they could get those kids back.
18 And eventually in 2014, the kids moved in with him and
19 Patty full time.

20 TJ treated those children as his own children.
21 He doesn't have any biological children of his own. TJ
22 ended up taking on the primary disciplinary role and
23 the primary caregiver position for those children.

24 Now, the problems with HS started when she

1 began high school. In January of 2019, Patty and TJ
2 learned that HS had been seeing a boy that they did not
3 approve of. The parents ordered her to quit seeing the
4 boy, to which HS refused. It actually came down to TJ
5 watching HS send him a breakup text message before they
6 knew she broke up with the boy. Needless to say, HS
7 was not happy about having to breakup with him.

8 HS began going around town spreading a rumor
9 that TJ had been molesting her. When the rumor got
10 back to TJ, he immediately pulled his wife to the side
11 and let her know about the rumor. And Patty at the
12 time completely discounted the rumor. She said you
13 know what, TJ? I know you would never hurt HS. And it
14 was put to bed and life at home continued as normal.

15 Now, ladies and gentlemen of the jury, as
16 you're listening to the evidence in this case ask
17 yourself, what about this situation would cause Patty
18 to not believe her daughter, to not report it to law
19 enforcement, and to allow the status quo to continue?

20 Now, the behavioral issues with HS continued.
21 In fact they escalated. HS began not doing her
22 homework. She began refusing to do her chores. And as
23 a result of the stress at home, Patty and TJ began
24 having marital problems. Patty began working more

1 hours. She was staying after work to drink with her
2 friends, leaving TJ at home to deal with the children
3 by himself.

4 TJ began suspecting that Patty might be having
5 an affair. Now, this all came to a head on July 14th
6 of 2019. It was a Sunday. TJ was actually setting up
7 the pool for HS's birthday party which was the
8 following weekend. TJ was outside with OS setting up
9 the pool, and he yelled for HS, who was in the house,
10 to come out and help him. HS come help us. HS refused
11 to come out and help them. They yelled again. Again,
12 she did not come.

13 So, TJ, after waiting five minutes, he went
14 into the house and he confronted HS about not coming
15 out to help him as instructed. HS immediately gave TJ
16 an attitude. TJ told HS to give him her phone as a
17 consequence. She refused. TJ tried to take the phone.
18 HS again refused. So, TJ said, you know what? We're
19 going to deal with this when your mother gets home, HS.

20 That's when HS said, quote, "Tell her mom that
21 you've been fingering me." TJ text Patty asking her to
22 come home immediately after she got off work. When
23 Patty got home, TJ took her to bedroom and he said,
24 "Well, apparently I've been molesting HS." Patty, not

1 realizing that TJ was being sarcastic, blew it out of
2 proportion and threw TJ out of the house, even though
3 TJ denied the allegations. Patty wanted out of this
4 relationship. This was her out whether she believed
5 the accusations or not.

6 It took Patty two days, two entire days to
7 report this incident to law enforcement. And it took
8 law enforcement three more months after that to even
9 contact TJ for an interview. When TJ was finally asked
10 to come in for an interview, he did. It was
11 November 5th of 2019. The interrogation lasted
12 approximately four and a half hours.

13 TJ was placed in the seat furthest from the
14 exit in a little tiny interrogation room. Two armed
15 detectives placed themselves in the two seats between
16 TJ and the exit. For the first four hours of the
17 interview, TJ adamantly denied that anything sexual had
18 happened between him and HS. He was refused a
19 cigarette break upon request. He had to ask to use the
20 bathroom during these first four hours.

21 Meanwhile, law enforcement we're saying over
22 and over and over to him, again and again, baiting him,
23 saying well, maybe you slipped one time. Maybe you
24 were rubbing CBD oil on her and it just slipped up

1 there. Or maybe you brushed her vagina. TJ realized
2 that the interview would not end until he finally said
3 that yes, one time I did accidentally, maybe slipped up
4 there.

5 TJ's involuntary confession will be address by
6 out expert witness, Dr. Deborah Davis, who you will
7 hear from.

8 We're also privileged to have you hear from
9 Dr. William O'Donohue, who is one of the country's top
10 experts in the field of child sexual assault, and who
11 has personally treated over 2,000 victims of sexual
12 assault.

13 Now, the evidence in this case is going to show
14 you how illogical HS's accusations are. For instance,
15 the July incident, HS claims that TJ was "fingering
16 her" while her brother, OS, who was wide awake, was
17 playing video games just a couple of feet away in the
18 same room. You'll also hear evidence that despite
19 claiming she was fingered by TJ for two entire years,
20 HS continually would ask TJ to rub her with CBD oil.
21 That's her back and upper thighs.

22 Also, know as you hear the evidence that every
23 time HS is questioned about the accusations in this
24 case, the period of time in which it occurred gets

1 longer and longer and longer. Initially HS tells her
2 mother it's only been happening since December or
3 January of 2019. Then she changes her story and tells
4 her mom that it's been occurring for one year. During
5 her forensic interview in this case, she told the
6 forensic interviewer that it's been happening five
7 times a week since she was 12-years-old.

8 Now, we're going to make sure you get the full
9 story in this case. And if you -- if you take anything
10 from this opening statement I hope it's this: It is
11 critical that you do not make a decision in this case
12 until you've heard both sides of the story.

13 Now, it's the State's burden of proof. So,
14 they're going to be allowed to present their case
15 first. Don't make up your minds in this case until
16 you've heard our side of the story. And after you've
17 heard all of the evidence in this case, the only
18 logical conclusion will be not guilty of all charges.
19 Thank you.

20 THE COURT: Okay. So, ladies and gentlemen, I
21 said we were going to break early today. And the
22 problem -- the problem I'm having is even though we
23 have a couple witnesses that might be available right
24 now, I think they're going to be relatively lengthy.

1 And it might just be better that we all have a fresh
2 start on everything tomorrow.

3 So, and then this way when the evidence
4 presentation starts, we can get going right in the
5 morning and get through the evidence. Or hopefully a
6 majority of it tomorrow. Okay?

7 So, and I did tell you, you know, I just want
8 to make sure that everybody has an opportunity to get
9 out and to vote. So, I'm at a crossroads myself in
10 relation to whether or not to recess right now or hold
11 off. But I think now is probably better just in case
12 there's something going on. I -- you know, I don't
13 know. I've been cloistered in my chambers all day and
14 selecting a jury, so I don't know what's going on out
15 there. All right?

16 I have heard somebody ran into the -- into
17 Raley's -- into our Raley's here. All right.
18 Strangest thing. So, apparently now there's a
19 drive-thru. But that's just kind of word on the
20 street.

21 But anyway, this way you could have plenty of
22 opportunity to take your time. You can make sure that
23 you can go out to vote and everything else.

24 So, we are going to start -- I would like to

1 start first thing tomorrow morning at 9:00 o'clock.

2 So, ladies and gentlemen, be here -- try to get here at
3 least five minutes before that. And so, that this way
4 we could get started right away, and everybody will be
5 fresh and ready to go in the morning. Okay?

6 So, like I told you, during the recess we're
7 about to take, you're admonished that it is your duty
8 not to discuss amongst yourselves or with anyone else
9 any matter having to do with this case. It is your
10 further duty not to form or express any opinion
11 regarding the guilt or innocence of the defendant until
12 the case has been finally submitted to you for a
13 decision.

14 You are not to read, view, or listen to any
15 report in the newspaper, radio, television, or on the
16 Internet concerning this case. Nor allow anyone to
17 read or comment upon them to you or in your presence.
18 This includes viewing any type of social media relating
19 to this case. You are not to investigate or attempt to
20 obtain any additional information about this case
21 outside the courtroom.

22 Do not visit the scene or attempt to
23 investigate on your own. Do not Google anything in
24 relation to this case. Do not read any legal text or

1 book regarding any issue raised in court. Should any
2 person attempt to discuss this case with you or in any
3 manner attempt to influence you with respect to it, you
4 are to advise the bailiff, who will in turn advise the
5 Court, and I'll take care of it.

6 Have a good evening recess. We'll see you at
7 9:00 o'clock.

8 (Jury exits.)

9 THE COURT: All right. So, okay.

10 So, I -- you know, it's 2:00 o'clock, and I
11 figured, you know, why go forward? We might as well
12 get it all done in the morning. Give you guys a rest
13 too after selecting the jury.

14 MR. KALTER: Thank you.

15 THE COURT: Okay? So, all right.

16 So, we'll get started. Be ready in court ready
17 to go at five minutes till 9:00. Because I want to
18 start at 9:00.

19 Have your first witness ready, Mr. Merrill. I
20 don't want the jury to come in here, and then we're
21 searching for witnesses.

22 MR. MERRILL: They're always ready.

23 THE COURT: Okay. Fair enough. All right.

24 So, even if she's -- even if she's present and

1 waiting, we can -- we can --

2 MR. MERRILL: Do you want her in here at five
3 minutes to 9:00 before the jury comes in? You want to
4 wait till --

5 THE COURT: No. We should call her. But have
6 somebody available that she's right outside the
7 courtroom and you know?

8 MR. MERRILL: Okay.

9 THE COURT: That we're not searching for
10 witnesses. That's the thing that always gets me. And
11 then half the time somebody's in the bathroom or...
12 Then we have to wait another five minutes or ten
13 minutes. All right?

14 MR. MERRILL: Yup.

15 THE COURT: So, otherwise, you know, thanks
16 again for, you know, the way everybody's been
17 conducting themselves. Is there anything that anyone
18 would like to bring up to the Court prior to recessing
19 for the evening?

20 MR. MERRILL: No, I don't have anything.

21 MR. KALTER: I don't think so either.

22 THE COURT: Okay. Well, very good.

23 Court's in recess.

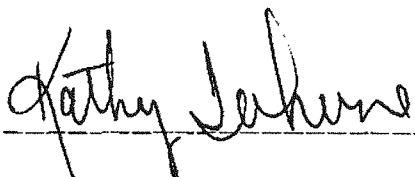
24 (End of Proceedings for the day.)

CERTIFICATE

STATE OF NEVADA)
) SS.
CARSON CITY)

I, Kathy Terhune, CCR 209, do hereby certify
that I reported the foregoing proceedings; that the
same is true and correct as reflected by my original
machine shorthand notes taken at said time and place
before the Honorable John P. Schlegelmilch, District
Judge, presiding.

Dated at Carson City, Nevada, this
11th day of May, 2021.

A handwritten signature in cursive script, reading "Kathy Terhune", is written over a horizontal dashed line.

Kathy Terhune, CCR #209

2021 MAY 24 PM 3:18

CASE NO. 20-CR-00099

DEPT. I

TANYA SOTOMAYOR
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT*Andrea Andersen*

THE THIRD JUDICIAL DISTRICT COURT - THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON
BEFORE THE HON. JOHN P. SCHLEGELMILCH DISTRICT JUDGE,
PRESIDING

THE STATE OF NEVADA,

PLAINTIFF,

v.

VOLUME II

THOMAS JASON BERNAL,

DEFENDANT.
----- /

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY TWO

NOVEMBER 4, 2020

COURTHOUSE

YERINGTON, NEVADA

Reported by:

KATHY TERHUNE, CCR 209

1 APPEARANCES:

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3

4 DEFENDANT PRESENT IN COURT.

5

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7

8 NO OTHER APPEARANCES.

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TRANSCRIPT OF PROCEEDINGS

THE COURT: Good morning, everybody. Anything to bring up to the court before we get started this morning?

MR. MERRILL: Good morning.

MS. SCHUMANN: Good morning, Your Honor. We just had one issue we wanted to address with the court before HS testifies.

Last time the court tried reassuring HS, when she was hesitant to provide testimony. And so we just want to make sure there is not any comments about truthfulness or anything like that. I know it was a motion hearing but different but we don't want the jury to hear any of those comments.

THE COURT: Okay. As far as I recall, I told her was we need to hear exactly what happened.

MS. SCHUMANN: That's fine, Your Honor.

THE COURT: So, but I understand.

MS. SCHUMANN: Right.

THE COURT: I don't want to give credibility to any particular witness.

MS. SCHUMANN: We appreciate that.

THE COURT: I understand what you're saying.

1 MS. SCHUMANN: Thank you, Your Honor.

2 THE COURT: It's the DA's job to make sure that
3 the witness is prepared. Okay.

4 MR. MERRILL: Exhibit Number 17, Your Honor, is
5 a series of text messages. The very last page of the
6 Exhibit 17 is a duplicate of the prior text, just more
7 blurry. Mr. Kalter is aware of that. I would like to
8 just remove the very last page.

9 THE COURT: You want to remove the last page of
10 Exhibit 17.

11 MR. MERRILL: Should be a duplicate of the text
12 right before.

13 THE COURT: Oh, it is, just a duplicate that
14 page. Do you have a problem with that, Mr. Kalter?

15 MR. KALTER: No, Your Honor. In fact, if you
16 want to take a moment for us, I'm going to stipulate to
17 a number of the State's exhibits.

18 THE COURT: Okay.

19 MR. KALTER: And if you wanted --

20 THE COURT: Lets do this one first.

21 So 17 I'm going to remove the last page that
22 was on the prepared exhibit, and continue to have it as
23 17. Because the last page is just a duplicate page of
24 the page prior. So, remove the last page of this madam

1 clerk, and then remark it as 17.

2 All right. So which ones are you going to
3 stipulate to? Do I have evidence, exhibit list?

4 THE CLERK: I don't have one for you judge, but
5 I can go --

6 THE COURT: No, that's all right. We'll get
7 one later. So which ones --

8 MR. KALTER: So it was State's Exhibits 3
9 through 16 which are photos.

10 THE COURT: 3 through 16 are stipulated to.
11 Admission, so they are admitted.

12 (Whereupon, State's Exhibits 3-16
13 for identification, were received
in evidence.)

14 MR. KALTER: And then 17, the one we just
15 discussed.

16 THE COURT: Okay. 17's admitted.

17 (Whereupon, State's Exhibit 17 for
18 identification, was received in
evidence.)

19 MR. KALTER: And then 18 and 19, one is a
20 diagram, the other is a photo of the interview with the
21 defendant at the police station.

22 THE COURT: Also 18 and 19 stipulated it
23 admission, so they are admitted as well.

24 (Whereupon, State's Exhibit 18 & 19 for

1 identification, were received in evidence.)

2 MR. KALTER: Correct.

3 THE COURT: Okay. So, you don't have to prove
4 foundation on those, Mr. Merrill.

5 MR. MERRILL: Yes, Your Honor. Thank you.

6 THE COURT: All right. Because they've been
7 stipulated to for admission -- that they are
8 admissible. So you can go right to the exhibit if you
9 have somebody testifying to.

10 Is there anybody in court that's going to
11 testify?

12 MR. KALTER: Not by defense.

13 MR. MERRILL: Not by the state.

14 THE COURT: Just want to make sure.

15 MR. KALTER: We formally invoke the Rule of
16 Exclusion, since we didn't do that.

17 THE COURT: Formally invoked.

18 Both parties need to make sure there is no
19 witnesses in the court courtroom.

20 All right. Everybody ready now?

21 MR. KALTER: Ready.

22 THE COURT: Bring in the jury.

23 (Jury enters the room.)

24 THE COURT: Counsel stipulate to the presence

1 of the jury.

2 MR. MERRILL: Yes, Your Honor.

3 MR. KALTER: Yes, Your Honor.

4 THE COURT: Okay. Good morning ladies and
5 gentlemen. How are you today?

6 THE JURORS: Good morning. Good.

7 THE COURT: Good. Okay. Glad everybody's
8 doing well.

9 All right. So, now now's the time for
10 presentation of the evidence. The state gets to go
11 first because it's their burden of proof. Mr. Merrill,
12 prepared for your first witness?

13 MR. MERRILL: Yes, Your Honor. The state calls
14 HS.

15 THE COURT: Please come in HS. And if can you
16 stand right there, face the clerk and raise your right
17 hand to be sworn.

18 (Witness sworn.)

19 THE COURT: Come on over here, HS, and have a
20 seat, right over there.

21 And HS, while you're in the witness chair, you
22 can take your mask off. Okay?

23 All right.

24 Go ahead, Mr. Merrill.

1 MR. MERRILL: Thank you, Your Honor.

2 HCS,

3 called as a witness herein by the State,
4 having been first duly sworn, was examined
5 and testified as follows:

6

7 DIRECT EXAMINATION

8 BY MR. MERRILL:

9 Q Please state your full name, and spell your
10 last name for the record.

11 A HCS. S-M-I-T-H.

12 Q Thank you, HS if being here.

13 What's your birthday?

14 A My birthday is July 20th, 2004.

15 Q How old does that make you today?

16 A I am 16.

17 Q Being 16, are you in high school?

18 A Yes, I'm a junior in high school.

19 Q All right. Where are you attending high
20 school?

21 A I'm not currently in high school right now
22 because I just moved. So, I'm soon getting into one.

23 Q And when did you move?

24 A About I moved October 9th, and I've been where

1 I moved ever since.

2 Q Okay. Prior to October 9th, what school were
3 you attending?

4 A I was going to Yerington High School.

5 Q Okay. All right. Tell me about school, when
6 you were attending Yerington High School?

7 A Pretty boring, specially with COVID. Only
8 going a week and staying home a week. It was kind of
9 difficult with the online learning. So I'm hoping to
10 get into a school that will take me like for longer
11 than that.

12 Q So you were dealing with because of COVID week
13 on, week off?

14 A Yeah.

15 Q Okay. With the COVID stuff going on, were you
16 doing any hobbies outside school?

17 A Not really. I was just limited to everything.
18 Couldn't hang out with my friends because I have so
19 many we couldn't be in big groups all the time. So, I
20 didn't really do anything.

21 Q Okay. Prior to Covid when you were in school,
22 I'm assuming that was tenth grade?

23 A Yeah.

24 Q Okay. Did you have any activity that you were

1 doing back then?

2 A I did drama, or theater, and like that was the
3 only after school activity that I really did.

4 Q Okay. Did you have any favorite classes or
5 classes you disliked?

6 A I really liked doing choir. I was really upset
7 when I heard that this year they weren't going to be
8 doing that. So, I got really upset.

9 Q Understandable. So where you living now, is
10 that in a different area?

11 A Yeah. I'm living in Gardnerville.

12 Q Gardnerville. Okay. Are you enrolled at this
13 point?

14 A Not yet. Semester just ended, second semester
15 just started. Everything's kind of like getting
16 falling into place.

17 Q What's the long-term plan with school there?

18 A Well, they're planning to put me on either
19 Douglas or smaller high school called Spire, which is
20 shorter class, and then the teachers, they help you
21 more to like make sure you succeed.

22 Q Okay. How were your grades when you were in
23 school here in Yerington?

24 A They're doing good. I was A-B student.

1 Q A, B's okay?

2 A Yes.

3 Q Occasional C or two?

4 A Yeah, the occasional. I made sure to get that
5 up.

6 Q Let's talk about your family. Tell me about
7 your family?

8 A What would you like to know about my family?

9 Q Do you have any siblings?

10 A Yes, I have a younger brother.

11 Q What is his name?

12 A His name is OS.

13 Q OS. How old is OS?

14 A He's turning 14 this month.

15 Q Okay.

16 A He's almost 14-year old.

17 Q What's your relationship like with OS?

18 A It's really awesome. Like, siblings, so, we
19 have this thing like protect each other, make sure the
20 other one doesn't get hurt. But the occasional sibling
21 argument over the stupid stuff.

22 Q Like what you argue about sometimes?

23 A Like video games. Like I'll ask him if he
24 wants to play video game with me and he'll either say

1 yes, or not right now. And he'll like, we have these
2 just random sibling arguments about food. Like if he
3 eats all the food that I like, I'll be like Hey, don't
4 eat it all. Come on, there is other people in this
5 house that like it, too.

6 Q Just seems like normal sibling?

7 A Yeah.

8 Q Okay. So you mentioned that OS likes to play
9 video games.

10 A Uh-hum.

11 Q You play video games, too?

12 A Yes, sir.

13 Q Is that a hobby of yours?

14 A It is. I just don't play as much because the
15 whole moving situation and like I don't have anything
16 to play. So, my play station is currently at my mom's.

17 Q Okay. And what type of games do you like to
18 play?

19 A Open World, shooter games, that kind of stuff.

20 Q What about OS, does OS, he plays video games?

21 A Yeah.

22 Q What kind of games does he play?

23 A He likes to play shooter games, adventure,
24 action. He likes to play all sorts of games. He has a

1 bigger -- he likes more than I do, because I'm more
2 picky with my video games. Like if I don't like the
3 description of it, I won't play it. Or if I do like or
4 if I do like sort of want to try it, I'll try it. If I
5 like it, I'll get into it.

6 Q I see.

7 Now, with OS playing video games, does he just
8 have a normal like controller that he uses or have
9 other equipment he uses when he plays video games?

10 A He has a play station. He has controller, and
11 he has a headset.

12 Q What's a headset?

13 A Headset is, I don't even know how to explain
14 it. It goes over your head, and there is like two.
15 Like speakers that go to your ears, so, some of them
16 are like sound-cancelling which meaning you can't hear
17 anything outside of it. So, and then just like to your
18 game audio, or talk to friends. He likes to talk to
19 his friends and play with them on the games.

20 Q Okay. And, then, a controller is normal
21 controller he holds in his hands?

22 A Yup.

23 Q Now, so you have just one sibling, is that OS?

24 A Yup.

1 Q Any other siblings?

2 A No.

3 Q Your mother, tell me about your mother?

4 A She's a good person. Just we've been butting
5 heads lately, that's why I moved.

6 Q Okay. And did you live with your mother and
7 your brother at some point?

8 A Yeah.

9 Q Okay.

10 A Up until the ninth of October.

11 Q The ninth of October. When you moved?

12 A Yeah.

13 Q Okay. And who are you living with now?

14 A I've living with my dad, his girlfriend, and
15 her two daughters.

16 Q Now, I want to take you back to July of 2019?

17 A Okay.

18 Q Do you recall that time period?

19 A What?

20 Q Do you recall that time period?

21 A Yeah.

22 Q Where did you live around July of 2019?

23 A I lived in Yerington, with my mom and my
24 brother.

1 Q Okay. And was the address at 610 U.S. Highway
2 95A?

3 A Yup.

4 Q Okay. That was in Yerington?

5 A Yes, sir.

6 Q Tell me about just the house in general, the
7 layout?

8 A It was a big house for like three bedroom, two
9 bathroom. But there was an add-on in the back. It had
10 an extra two rooms. One storage, one of them was like
11 an extra room, so we had like stuff in it. We didn't
12 really clean it out.

13 And so, we had big living room. It was big.
14 And then we had a kitchen, and it was like -- I can't
15 explain it.

16 Q Okay. So, as you walk into the front door --

17 A Is the living room.

18 Q -- house what's there?

19 A Living room. And then to the left it was the
20 dining room. And then to the left and like this way.

21 Q Just if you just use, just use your words
22 instead of your hands, all being recorded.

23 A Like if you go to the left and you go forward,
24 there's the kitchen. And then if you went to the right

1 and you turned right again like it was mine and my
2 brother's room in the back room. Then if you turned
3 left it was my mom's room.

4 Q Okay. You mentioned there is a group of two
5 rooms?

6 A Yeah. If you go through the kitchen to the
7 like if you turn a left in the kitchen you go to the
8 laundry room. And you go straight down like the
9 laundry room, little hallway. There is a door there.
10 There is a stairway down to like the extra rooms and
11 little hallway to either side of the back --

12 Q I see.

13 A -- yard.

14 Q So, those two back rooms, are there separate
15 entrances to those rooms at all?

16 A There is on -- in the back of the house on is
17 the left and right sides, there is two sliding glass
18 doors. There is also a door into the main house.

19 Q Okay. But to get into. From the house to the
20 bedrooms you have to go through the laundry room?

21 A Yeah.

22 Q Back there? Okay.

23 Tell me about the sleeping arrangements?

24 A The living room and then you took the right to

1 my and my brothers' room. My brother's room is
2 straight down, and like straight down the hall. And
3 the bathroom was on the left side. My room was on the
4 right side.

5 MR. MERRILL: May I approach your clerk, Your
6 Honor?

7 THE COURT: Okay.

8 BY MR. MERRILL:

9 Q So, getting back to the sleeping arrangements
10 on the house, did you have your own room?

11 A Yes.

12 Q Okay.

13 A Me and my brother had separate rooms.

14 Q Okay. And where does your mom sleep?

15 A So, in the living room there is a dining room
16 on the left side. And then there is a door that goes
17 into her room. Like right as the dining room, there is
18 a wall and then the dining room. And then it goes into
19 her room. So there was a door there for her room.

20 Q I see.

21 A Yeah.

22 Q Okay. And then did you ever have any
23 roommates, your mom have any roommates?

24 A After TJ left the house, she had a roommate for

1 I think four to five months, and then she left. And
2 then as soon as we moved out of that house -- when we
3 decided we wanted to move out, she wanted to buy the
4 house.

5 Q Now, is your mother married?

6 A Does not getting divorce papers count as
7 married still?

8 Q Let me ask you this: Do you know
9 Thomas Bernal?

10 A Yes.

11 Q How did you know Mr. Bernal?

12 A He was married to my mother for I do believe
13 five or six years.

14 Q And if you recall, how did you first meet
15 Mr. Bernal?

16 A My mom.

17 Q Okay. Does Thomas Bernal, does he have
18 nickname he goes by?

19 A Yeah, he told us to call him TJ.

20 Q Is that what your family called him?

21 A Yeah. Me and my brother both.

22 Q Okay. Is TJ or Thomas Bernal, is he in the
23 courtroom today?

24 A Yes, he is.

1 Q Can you identify him by article of clothing
2 he's wearing and point in his direction?

3 A He's right there.

4 Q And what article of clothing is he wearing?

5 A He's wearing a suit.

6 Q Thank you.

7 How long did you know TJ for up until today?

8 A I think I knew him since -- it's been a while.
9 We lived with my aunt. And I was about 11 I think when
10 I met him.

11 Q Okay. And when did you move into the house on
12 610 95A?

13 A I think my -- I think I was in either seventh
14 or eighth grade I do believe.

15 Q And when you first came into the house, was the
16 defendant living with you at the very beginning?

17 A Yes.

18 Q What was your relationship like with the
19 defendant?

20 A He was mom's husband, not my dad. So, I didn't
21 refer to him as like a father figure, all that. We
22 listened to him. We did our chores when we were told.
23 The kind of things like cleaning the litter box,
24 because we had like ten cats at one time. So, I had to

1 go do that. And we just like listened to like go do
2 your chores, time to go to sleep, get up for school.
3 That kind of stuff.

4 Q Okay. Did you ever do any activities with him?

5 A Not really. He just drove us to and from the
6 bus stop. Played video games all day, when we got home
7 he was still playing. And then he'd watch video games
8 on the streaming platform called Twitch, which is where
9 you can watch people play games in real time. And it's
10 a source of entertainment. So we watch that. He
11 watched that every night.

12 Q Okay. So defendant would watch Twitch and play
13 video games?

14 A Yeah.

15 Q Did you ever participate in watching twitch and
16 play video games?

17 A Uh-hum. Yes.

18 Q And was that with the defendant as well?

19 A Yes, sir.

20 Q Tell me how, how do you watch something like
21 Twitch?

22 A Well, you go into the internet, and in the
23 search bar you type up Twitch, like through all the
24 games that are played. Like, for example, Minecraft,

1 which is a game about placing blocks and like building
2 and surviving, and just creativity in general.

3 You would go to the stream and that would play.
4 And just watch them play it, and enjoy it. They would
5 just make like they would talk to you, like -- it's
6 like a real live in realtime thing.

7 Q Okay. Where in the house, did you watch
8 Twitch?

9 A In the living room.

10 Q Okay. And if you could just use your words and
11 describe how the living room is laid out in general?

12 A So, on the one wall we had a fireplace and
13 little table in the corner. And we had a door, which
14 we had to put up to keep the cats from going and peeing
15 and spraying in my brother's room. So we put a door
16 up. And right behind where the door -- because the
17 door opened, it would open out. So you would have to
18 pull it out to open it. And when the door reached it's
19 limits, the couch was right there, behind where the
20 door would swing open.

21 And it was -- we had another couch right next
22 to it facing the TV which was the window was in the
23 front of the room. This is the right side of the room.
24 So, it was facing the front of the room about halfway

1 in the middle of living room. And we would watch -- he
2 had his set up right behind the couch.

3 Q So the setup to watch Twitch was in the living
4 room?

5 A Uh-hum.

6 Q Near the couch?

7 A Uh-hum.

8 Q Now, you mentioned that the defendant would ask
9 you to do things like chores?

10 A Yeah.

11 Q Things like that around the house?

12 A Uh-hum.

13 Yes, sir.

14 Q Did you ever not do them?

15 A No, I always did my chores. Me and my brother
16 always made sure to keep up on that kind of stuff.

17 Q Okay. Did you ever have -- let me rephrase
18 that.

19 So let me take you to July 14th of 2019?

20 A Okay.

21 Q Do you recall that day?

22 A Yes, I do.

23 Q Okay. Why do you recall that day?

24 A Because that day I was in a big fight with TJ.

1 I had asked him if for my birthday, because it was six
2 days away, if we could set up a swimming pool. I could
3 have like a pool party, some friends come over and
4 spend the night. And he was like, "No, I'm too tired,
5 not right now." Which is what he'd been doing like for
6 months on end. Because I kept asking him, asking, "Can
7 we do it? Can we do it?" I didn't -- I wasn't trying
8 to be pushy but sometimes it just happens to be that
9 I'm pushy about certain things. Because like having
10 things done like you don't have to do it again. And
11 so, he told me that he didn't want to, he was too
12 tired. And so I was like okay. I went back to my
13 room. Then I came out to see what my brother was
14 doing, sitting on the couch, playing on my phone. I
15 was just watching my brother play video games.

16 Q Okay. So you said a big fight. What do you
17 mean by a big fight?

18 A Like. He start yelling, and I started crying,
19 and then like he kept yelling at me. I kept crying,
20 kind of deal.

21 Q And that's because you wanted to set up for
22 your party the week after?

23 A No. That was after the fact that I asked about
24 the pool.

1 Q Okay. All right. So, there is some sort of
2 argument, you went to your bedroom?

3 A Yeah.

4 Q Okay. What happened in your bedroom?

5 A Nothing. Just went in there to take a few
6 minutes to calm down, and everything. And then every
7 time I would actually be able to calm down, he would
8 come in again and start yelling at me for no reason.

9 Q I see. Do you recall what he was saying
10 specifically?

11 A He was like, "If you tell your mom anything,
12 then I'll be put in jail. She'll never then be happy
13 again."

14 Q What was the defendant referring to?

15 A Earlier when I was watching my brother, he
16 decided to come sit over, and he start touching my
17 parts. Like he started trying, I told him no. And --
18 or he did, and I told him no. And he got super upset
19 about it. I was like, "I'm going to tell my mom.
20 Because this is gone on long enough."

21 Q Where did this happen?

22 A In the living room.

23 Q In the living room. Okay.

24 And what time of day approximately, do you

1 remember?

2 A About afternoon, evening. Like maybe four,
3 five o'clock in the evening. I can't exactly recall
4 what time. But I know it was like afternoon and
5 evening.

6 Q Why do you say you think it was afternoon,
7 evening?

8 A Because it started earlier in the afternoon,
9 and then it all ended like later that night at like
10 around five or six o'clock, I'm sure.

11 Q So, you indicated that the defendant touched
12 you at that point?

13 A Yes.

14 Q Around 4:00 or 5:00 p.m.?

15 A No, around like I do -- I'm not exactly sure.
16 But it was earlier than five o'clock.

17 Q And when this happened, was there anyone else
18 present?

19 A Yes, my brother was still -- he was in the
20 living room, sitting in front TV looking up at it
21 playing video games.

22 Q And do you recall exactly what your brother was
23 wearing, or not wearing. Strike that.

24 Do you recall what your brother was playing?

1 A I do believe he was playing Tom Clancy's, it
2 wasn't Rainbow Six. I'm trying to think about what
3 game. I'm pretty good with the names of games, so I
4 just can't remember.

5 Q Okay. But he was playing some sort of game?

6 A Yeah.

7 Q And if you can tell me exactly what the
8 defendant did?

9 A He decided he was going to put his fingers -- I
10 was ready to say it -- inside of me.

11 Q Where are you sitting?

12 A Hum?

13 Q Let me rephrase. Where are you sitting when
14 this happens?

15 A Yeah.

16 Q Where is the defendant?

17 A I was on the edge of the couch which meant I
18 was right next to where the door swung open. He was
19 sitting like right like in the middle closest to me I
20 guess you could say. I'm not good with explaining it.

21 Q Okay. And you indicated that he put his finger
22 inside of you. I mean how does that initiate?

23 A I was just sitting on the couch he started like
24 rubbing up on my legs and everything. He just decided

1 that that oh, I'm just going to do this.

2 Q And how was he rubbing your legs?

3 A He was like, I can't explain it. He was like
4 rubbing my legs like, I can't explain it.

5 Q Okay. And do you recall what you were wearing?

6 A I do believe I was wearing a tank top and
7 shorts, because it was a summer day, and it's really
8 hot in the summer.

9 Q Do you recall what the defendant was wearing?

10 A No.

11 Q And did his hands, did they touch your legs?

12 A Yes.

13 Q Okay. And how long was this whole interaction,
14 how long did this happen?

15 A I would say 5 to 10 minutes. With me sitting
16 on the couch, him like rubbing, and then finally
17 putting his fingers inside me.

18 Q And so that the 5 to 10 minutes including the
19 rubbing of --

20 A Uh-hum.

21 Q -- your body?

22 A Yes.

23 Q Okay. What side was he sitting on of you?

24 A My left side?

1 Q Okay.

2 A Yeah. My left side.

3 Q And exactly what did he do with his hands are
4 after he rubbed you?

5 A He -- he decide that'd he wanted to put them
6 between my legs. Decided he wanted to put his hand
7 between my legs, and put his fingers inside of me.

8 Q And did his finger penetrate your vagina?

9 A Yes, sir.

10 Q And do you -- do you know if it was one finger?

11 A Yes.

12 Q Did you know if it was more than one finger?

13 A No.

14 Q How do you -- well, strike that.

15 How long was his finger inside of you?

16 A Maybe a minute or two, before I told him to
17 stop. And he wouldn't.

18 Q And did you say anything while he was rubbing
19 your body before he penetrated you?

20 A No, because I didn't think that anything was
21 going to happen like that.

22 Q Why didn't you -- why didn't you think anything
23 like that was going to happen?

24 A I was just watching my brother play a game. I

1 was really tired that day. I'm always tired in the
2 summer, because it's so hot outside. And I just
3 finished my chores. I was just sitting there watching
4 my brother, so kind of tired.

5 Q Your testimony is that happened on July 14th of
6 2018?

7 A That was the last time it ever happened.

8 Q And you indicated you told him no?

9 A Yes.

10 Q Okay. And that was at least a minute into it
11 you think?

12 A Yes.

13 Q Did you tell him no prior to that time?

14 A No, because I get scared when I tell people no.
15 So I don't know how to tell them. Because I don't like
16 telling people no. If one of my friends asks me, I can
17 try, but I can't promise you anything. Like I really
18 don't tell anybody like no.

19 Q And getting back to the argument you said you
20 had?

21 A Uh-hum.

22 Q Was the argument prior to the defendant doing
23 this to you, or was it after?

24 A The argument was right after I said no to him.

1 Q Okay. So, tell me how the -- so the argument
2 happened. Okay. What did you do during the course of
3 the argument?

4 A I went to my room, like I've always done, if I
5 got upset so I can take a minute to calm down. And I
6 was to the point where I was okay. And I was like
7 calmed down. And he kept coming into my room, and like
8 yelling at me. And I that just made me more, like it
9 made me cry even more, as soon as I was like calmed
10 down enough. It was like he was trying to do that.
11 Like as soon as I was calmed down, he would start
12 yelling at me again.

13 Q Do you recall what he was yelling at you about?

14 A He was yelling something like, "If you tell
15 your mom, I'm going to prison. She'll never be happy."
16 And stuff like that.

17 Q Okay. And what happened after the argument?

18 A After the argument, he packed up a bag of his
19 stuff, and put it in the living room next to his
20 computer, and texted my mom, saying, "You need to come
21 home right now."

22 And she said, "I'm at the bar. I'm having a
23 beer. I'll be home in a few minutes."

24 He's like, "No, you need to come home right

1 now."

2 Q You said he packed a bag?

3 A Yes.

4 Q How did you know that happened?

5 A Because I walked out into the living room to
6 check on my brother just to make sure he was okay, and
7 he wasn't like freaking out or anything, and I saw his
8 bag was packed.

9 Q I see. Did you see anything inside the bag?

10 A No.

11 Q Okay. Now, getting back to your brother. What
12 is your brother -- and this is OS, right?

13 A Yes.

14 Q What was OS doing during this entire --

15 A He was just playing his video games. He would
16 look back every once in a while. I think at one point
17 he went into his room. He moved the Play Station into
18 his room I think. He had a TV but I'm not exactly
19 positive about that. And so I do believe that at that
20 time at some point later into the argument he moved
21 into his room to go play, but I'm not exactly sure.

22 Q When the defendant sexually assaulted you, did
23 -- OS was still in the living room playing the video
24 game?

1 A Yes.

2 Q Was he facing towards you or away from you?

3 A Away from me. His back was turned toward the
4 couch. Which meant it was turned away -- it was
5 turned, his back was turned toward us.

6 Q And are you watching OS play or are you
7 watching something else going on?

8 A I was watching my brother play the game.

9 Q And do you recall if OS had his head set on or
10 not?

11 A He did not.

12 Q He did not?

13 A Uh-uh.

14 Q All right. So you see bags packed. Are you
15 around when your mom comes home?

16 A Yeah, I was in my room.

17 Q Okay. And what happens once your mom comes
18 home, if anything?

19 A As soon as she walks in the door, she goes to
20 their bedroom at the time. It was both of theirs. He
21 follows her in there. And tells her, and then she
22 yells across the house, and says, "HS come here." And
23 I get nervous, when I get nervous I smile a lot.
24 Because I was confused about what was going on at the

1 time. I was shocked.

2 So, I was like smiling a lot because I was
3 nervous. And my mom was like, "Why are you smiling?"

4 I was like, "Because I'm nervous."

5 And she asked me if it was true or not. I told
6 her it was.

7 Q And so you indicated that it was true?

8 A Yes.

9 Q Did you hear the conversation between your
10 mother and the defendant?

11 A No.

12 Q How did you know that she was referring to
13 something in particular when you said it was, she asked
14 you if it was true or not?

15 A Because he told me that he was going to tell
16 her himself.

17 Q He told you that he was going to do that?

18 A Yes.

19 Q When did he tell you that?

20 When did the defendant tell you he was going to
21 tell your mother?

22 A The last part of our argument was I was like in
23 my room, and he's like, "I'm just going to tell your
24 mom myself then." Because I told him that I was going

1 to tell her first. And he didn't want to -- he didn't
2 want me to say anything because he just didn't want me
3 to say anything. He wanted to confess to her himself.

4 Q And when you spoke to the defendant regarding
5 him speaking the to Patricia, was that after he
6 penetrated your vagina?

7 A Yes.

8 Q Where did that conversation take place?

9 A In their bedroom.

10 Q Well, let me rephrase that. Did the
11 conversation that you had with the defendant, did that
12 take place in the bedroom as well?

13 A My in my bedroom. Like it was -- he was
14 yelling at me from my doorway, and I was yelling back
15 at him because I was so upset.

16 Q All right. Getting back really quick, when
17 you're both sitting on the couch watching your brother
18 play games, did your clothes move in any way?

19 A Yes.

20 Q How so?

21 A He like moved my sports shorts to the side, and
22 stuck his hand up.

23 Q Do you recall if you were wearing underwear or
24 not?

1 A Yes, I was.

2 Q Now, you mentioned that this was the last time
3 that something like this happened?

4 A Yes.

5 Q Were there other times?

6 A Yes.

7 Q Tell us about some other times this happened?

8 A I think a month after we moved in, and like I
9 was sitting on -- he had a chair behind his computer, a
10 little black chair behind his computer. The one he sat
11 in was red. So I sat in the black one, and he decided
12 he wanted to put his feet up on my legs. He just
13 decided that, "Oh, I'm just going to do this now." I
14 don't know what he was thinking, but --

15 Q Do what, now?

16 A That he was going to start touching me.

17 Q Is that the first time that happened?

18 A Yes.

19 Q Okay. And how did he start touching you?

20 A What do you mean?

21 Q You indicated he put his feet up on your legs?

22 A Yes.

23 Q Okay. And did he touch you inappropriately at
24 that time?

1 A Yes.

2 Q Okay. What did he do?

3 A He like put his foot right in between my legs

4 on, like he had his foot on the chair and he put his

5 foot right in between my legs.

6 Q Between your legs, is that any where in

7 particular?

8 Would that be your private area?

9 A Yes.

10 Q And is there a name for your private area?

11 A Yes.

12 Q And what is that?

13 Was his foot pressed against to your vagina?

14 A Yes.

15 Q Okay. Were your clothes on or off?

16 A My clothes were on.

17 Q On?

18 A (Nods head.)

19 Q Okay. And you said that was just a month or

20 two after you moved into the house?

21 A Yes.

22 Q Okay. That's the 610?

23 A Yes.

24 Q All right. Let me take you to ninth grade?

1 A All right.

2 Q Where were you attending school?

3 A At Yerington High School.

4 Q And what type of classes did you have that
5 year?

6 A I had biology, choir. I had two math classes
7 and English and all freshmens are required take a year
8 of world history. So I was in world history.

9 Q And did you have favorite class that year?

10 A Choir mostly. And then biology as well.

11 Q And did you have a teacher named Ms. Mueller?

12 A Yes, she was that my English teacher.

13 Q Okay. What did -- she taught English?

14 A Yeah.

15 Q Was there something that you wanted to indicate
16 that was inappropriate that happened while you were
17 attending Ms. Mueller's class that happened at home?

18 A Yes.

19 Q And what was that?

20 A He touched me, inappropriately touched my
21 private parts.

22 Q And you say he, who do you mean?

23 A TJ.

24 Q Okay. Exactly what did the defendant do?

1 A He put his fingers inside of my vagina.

2 Q Do you recall how that started?

3 A I was laying in my room. I just got off
4 school. Ms. Mueller's class was the last class of the
5 day so my brain was exhausted from English of course.
6 And I went to go lay down. I walked across the school
7 around three to four times that day so my legs were
8 really tired, because I'm not used to walking around
9 the school that much. So I was laying in my bed. I
10 put my book -- my backpack down right next to my
11 closet. I laid on my bed. I was playing on my phone.
12 I was just laying there. And he walks in, and he
13 starts touching up on my legs. And he decided to put
14 his hands inside me.

15 Q You said he started rubbing your legs?

16 A Yes.

17 Q How did that happen?

18 A He just came into my room, and I always
19 complain that my legs hurt because I complain a lot.
20 Is what teenagers do. I complained about my legs
21 hurting. He's like you want help with that. I didn't
22 think anything of it. I said sure. So he was
23 massaging my legs, and all the sudden it went further
24 than just that.

1 Q So when he was rubbing your legs, did he start
2 in a particular area?

3 A He started at my thighs I do believe.

4 Q Okay. Did you recall what you were wearing?

5 A Just got out of school, so I was wearing pants
6 and a T-shirt.

7 Q Okay. Okay. And you just got out of school.
8 So what time approximately was this?

9 A School got out around 2:50, and our bus stop a
10 two- to three-minute drive away. So around
11 three o'clock.

12 Q I see. Do you get picked up or do you walk
13 home from the bus stop?

14 A We got picked up.

15 Q Who picked you that day?

16 A TJ.

17 Q Was that typical for TJ to pick you up?

18 A Yeah. Mom had to work really late at night,
19 like she had to go as soon as we got off the bus so she
20 couldn't pick us up.

21 Q Was that typical for your mother to work --

22 A Yes.

23 Q -- those hours?

24 Okay. So she would typically go to work about

1 the time you get home?

2 A Yeah. She worked -- it was very rare that she
3 picked us up, like maybe once or twice a month she
4 would pick us up from the bus stop.

5 Q So on this occasion, who was home?

6 A He just picked up me and my brother from the
7 bus stop. We just got off the bus. So it was just me,
8 OS and him.

9 Q You indicated that your legs were sore?

10 A Yes.

11 Q Was that a typical thing with you?

12 A Yeah. I had to walk, most of my classes were
13 across the school. And across the school is quite a
14 long walk, and only four minutes to get there, so I was
15 like speed walking. And so after I'd like -- when I
16 was a little kid I use to hit my knees together really
17 hard, so I have knee issues. My knees would hurt every
18 day, legs would hurt every day. It was just normal.

19 Q And so you indicated that the defendant came in
20 and started rubbing your legs --

21 A Yes.

22 Q -- on that day? Okay.

23 Was that a typical thing for him to do?

24 A He only did it in the beginning maybe once or

1 twice if I was complaining, and it wouldn't go any
2 further than that. But then after the first time, he
3 was like oh, I can do more and more times, and she's
4 not going to say anything.

5 Q So how many times, if you know, did TJ just rub
6 your legs?

7 A Maybe just do that, maybe like once a week.

8 Q So once a week he would just rub your legs?

9 A Yeah.

10 Q Okay. For what time period?

11 A A year, two years, more or less. Maybe a few
12 months, and then it started escalating to him touching
13 more and more.

14 Q And what do you mean when you said that it
15 escalated to touching more and more?

16 A He started touching my privates.

17 Q And specifically your vagina?

18 A Yes.

19 Q Would this typically start with rubbing, or was
20 there ever a time -- this usually started with rubbing?

21 A No.

22 Q How did it the penetration --

23 A He just rubbed my legs and then he just put
24 them inside of me.

1 Q Okay. How often did that occur, where he would
2 rub your legs and then also penetrate you?

3 A I can tell you more than once a week.

4 Q Was there ever a -- did this ever happen in a
5 normal place?

6 A My bedroom. The living room.

7 Q Where did it occur most often?

8 A My bedroom.

9 Q So when this would occur, when he would
10 penetrate you in your bedroom, did you ever invite him
11 into your room to do that?

12 A Not to do that. He would knock on my door, and
13 like want to talk to me about school, and how it was
14 and like just ask me What'd you do today. And then it
15 would just lead up to that as I was like talking about
16 my day.

17 Q So I want to go back briefly. You originally
18 talked about the one that -- about Ms. Mueller.

19 A Uh-hum.

20 Q And then we talked about that one that you
21 remembered with Ms. Mueller when you were in her class?

22 A Okay.

23 Q You indicated that you were wearing some
24 clothes, like just normal school clothes; is that

1 correct?

2 A Yeah, and then he walked out of the -- well, he
3 told me to change out of them so he could get my legs
4 more. And then so I did. And I got comfortable. I
5 was just laying on my bed.

6 Q Do you recall what you changed into?

7 A Shorts and a tank top.

8 Q And once you changed into the shorts and tank
9 top, what happens?

10 A He came back in my room as soon as I opened the
11 door.

12 Q And when he came into the room, what happened?

13 A He started rubbing my legs, and then he touch
14 me, touched my private.

15 Q And when this occurred, was the door open or
16 closed?

17 A The door was wide open.

18 Q Okay. When he began rubbing your legs, in that
19 instance, did he start anywhere particular on your leg?

20 A My thighs.

21 Q Thighs. Okay.

22 In that instance, did you physically resist in
23 any way?

24 A No, I didn't know it was going to lead to

1 anything more. I just thought it was like him trying
2 to help like, trying to help my legs.

3 Q Okay. Did you say anything to him when that
4 happened?

5 A He just started a random conversation, about
6 something weird. Like random, just I can't even
7 remember what it is. And he just continued as we were
8 talking about it.

9 Q And did you want that to happen?

10 A No.

11 Q If you could describe your body position when
12 that happened?

13 A I was laying down on my back and my right leg
14 was up like in a triangle position. Like this, like
15 triangle.

16 Q Like bent at the knee?

17 A Yes.

18 Q And where was the defendant?

19 A He was by my feet, at the foot of my bed.

20 Q If you know, do you know did he use his fingers
21 that time to penetrate you?

22 A Yes.

23 Q If you know, was one finger, two fingers or
24 more?

1 A I do believe it was only one.

2 Q And why do you say that, you believe it was
3 only one?

4 A Like I don't remember any other ones. I don't
5 remember anything more.

6 Q How long did that last for, if you know, where
7 he actually penetrated you with his finger?

8 A Maybe like five minutes, and then I stopped
9 him. But he just wouldn't stop, so he continued to do
10 it. And I kept like pushing his hand away from me, and
11 he just wouldn't stop.

12 Q He kept pushing his hand away. How did that
13 occur?

14 A I kept like using my foot to push his arm away
15 from me. And he just threw it out of his mind that I
16 was trying to tell him to stop.

17 Q Now Ms. Mueller's class, that was ninth grade
18 right?

19 A Yes.

20 Q Okay. Was that between August 2018 and the
21 30th day of June, 2019?

22 A I do -- I think it would have been 2018, 2019;
23 2019, 2020; 2020, 2021, which would make a junior now.

24 Q So it would have been the August 1st, 2018?

1 A Yes.

2 Q To the 30th day of June, 2019?

3 A Yes.

4 Q Somewhere in there?

5 A Yeah.

6 Q Now, you indicated that there was two times
7 that this happened; is that correct? So far?

8 A Yes.

9 Q Okay. Were there -- Did all these times occur
10 when it was just you, your brother, and the defendant
11 home?

12 A Yes.

13 Q Okay. Were there any other times when your
14 mother was home?

15 A Yes.

16 Q Tell me about those times?

17 A My mom got off work, or she had that day off,
18 and was a Wednesday or Thursday, and she had those days
19 off. She worked at a casino. Her shifts were all
20 crazy, so she'd come home those two days be really
21 exhausted from her week. And she would come and take a
22 shower. It was like routine. So, after it hit a
23 certain time she would go take a shower, and do stuff
24 around the house, like vacuum and sweep and mop and do

1 the dishes. And while she was in the shower, I was
2 sitting I do believe in my bedroom on my phone and I
3 was minding my own business. I was just doing my
4 thing, watching YouTube, watching gamers play, reactive
5 videos. And he came in, and said your mom's not out of
6 the shower for like ten more minutes.

7 I'm just like, Okay. I know that. Because she
8 had gone in, and I was aware that she only takes like
9 maybe 15 to 20 minutes showers. So, I was aware that
10 she only had like, what, ten minutes, eleven minutes
11 left. And he was like, If you don't let me do
12 something, you can't play video games tomorrow. And he
13 knew how I loved my video games. I loved playing them
14 every day. I loved playing them with my brother. And
15 he used it against me to try and get -- to try and do
16 stuff to me.

17 Q So your mom's in the shower during that time?

18 A Yes.

19 Q Okay. And he basically he said he wasn't going
20 to allow you to play video games unless he was able to
21 do something to you; is that correct?

22 A Yes.

23 Q Did anything happen that time?

24 A Yes.

1 Q What happened?

2 A He touched my privates, for five minutes, and
3 then he heard their door close, so he left the room
4 really, really quickly to seem like Oh, I was just
5 going to check in on her.

6 Q And by privates again you mean vagina?

7 A Yes.

8 Q What body part did he use at that time?

9 A His fingers.

10 Q Okay. And defendant's finger penetrated your
11 vagina on that time?

12 A Yes.

13 Q Okay. How long did that one last?

14 A Maybe like two minutes.

15 Q Did you request for that to happen?

16 A No.

17 Q Okay. Was there another time while your mom
18 was home?

19 A Yeah.

20 Q Tell me about that time?

21 A It was another day, when she was in the shower,
22 and dinner was in the slow -- the slow roaster. And it
23 was had been cooking all day. She was making it really
24 good. And she went to go get in the shower and dinner

1 was almost done, so TJ had to check on dinner, and then
2 he didn't do that until she got out of the shower, and
3 the door closed.

4 Again, he got scared and left my room. It was
5 same scenario. He just left the room, even quicker to
6 go check on dinner, then make it seem like nothing had
7 been going on.

8 Q I see. So you say same scenario?

9 A Yes.

10 Q Can you describe what that scenario was?

11 A I was minding my own business, watching
12 YouTube, watching whatever, the regular thing that I
13 watch, like YouTubers reacting to weird people on the
14 internet. And I was watching it, and I was just
15 minding my own business, and he came in again, and
16 start touching my privates, and then left as soon as he
17 heard their door room shut.

18 Q I see.

19 A Their room door.

20 Q Again privates, you mean your vagina?

21 A Yes.

22 Q Defendant, did he use his finger at that time?

23 A Yes.

24 Q Did you ask for that to happen?

1 A Nope.

2 Q On that occasion do you recall resisting?

3 A Yes.

4 Q So prior in your testimony you indicate this
5 happened where he would penetrate your vagina once a
6 week?

7 A More than once a week.

8 Q Okay. How did it -- how did that all start?

9 A The whole us moving in, and a month or two in,
10 he put his foot right there, and just was like This is
11 nice, I'm going to do this.

12 Q Now, were there other times?

13 A There was so many other times, there's been so
14 many, I can't really remember any more.

15 Q And every time this happened, so your birthday,
16 is July 20th, right?

17 A Yes.

18 Q Okay. And you're 16 now?

19 A Yes.

20 Q And so these all happened when you were younger
21 than you were 16?

22 A Yes.

23 Q Was there ever a time it happened, sexual
24 penetration, the sex assaults, where massaging didn't

1 take place?

2 A No.

3 Q Did this take place, an unwanted sexual
4 penetration by the defendant, did any of that take
5 place between the months of December 2018 and the end
6 of February 2019?

7 A Yes.

8 Q During that time period was this still
9 occurring on a regular basis?

10 A Yes.

11 Q And when I talk about this was still occurring,
12 that was the defendant was still sexually assaulting
13 you?

14 A Yes, sir.

15 Q During that time period?

16 A Yes, sir.

17 Q What was the frequency, if you recall, during
18 that time period of December 1st, 2018, to end of
19 February 2019?

20 A He tried like maybe twice, twice a week at that
21 time and then escalated to five times a week.

22 Q So you said the word tried, what do you mean by
23 he tried?

24 A I don't mean he tried, he did. About two times

1 a week when it first started, and he escalated to five
2 days a week, because my mom was home the other two.

3 So he escalated from two times a week to doing
4 it five times a week. And maybe the sixth from when my
5 mom was home.

6 Q The times that your mom was home, was that the
7 only the two times when she was in the shower?

8 A Yes.

9 Q Do you recall what time period that was in?

10 A I cannot.

11 Q Okay. Was it towards the end of when all this
12 stopped, or is it towards the beginning?

13 A It was I think more towards the beginning.
14 Like in the beginning and the middle but more towards
15 the beginning.

16 Q Did you ever speak about this to anyone else?

17 A I kept it to myself because I didn't know what
18 was going to happen if I said anything.

19 Q What do you mean by that?

20 A I didn't know like because he kept like -- he
21 kept yelling at me, and saying that Your mom's not
22 going to be happy. And I didn't know because, I want
23 my mom to be happy of course. It's just I didn't know
24 what was going to happen. If my mom was going to be

1 disappointed, it went on so long, that if she was just
2 disappointed in me, like she didn't believe me. All
3 these things were going through my mind. So I just
4 kept it to myself.

5 Q So going back to July, 14th, 2019?

6 A All right.

7 Q Again you indicated that was there a night
8 right?

9 A Yes.

10 Q At that point, I believe you said something to
11 the effect that you were going to tell your mom at that
12 point?

13 A I was -- I told him that after I told him to
14 stop, that I said I'm going to tell my mom and there is
15 nothing you can do about it. And so that's when he
16 decided No, you are not. I'm going to tell your mother
17 first. And then I'm leaving.

18 Q Why, why at that point, why July 14th, did you
19 decide to then tell your mom?

20 A Because for months, about four months before
21 that day, I had been trying to tell her, like. One
22 night I got really, really upset, and I was laying my
23 room just crying, and yelling, and I was just so upset
24 at that point. And she had come into my room, and she

1 was like what's wrong. And I was trying to tell her,
2 but he wanted to stand in the doorway, and made sure I
3 didn't say anything.

4 Every time I tried to tell her, he would be
5 either standing in my room or standing in the doorway
6 of my room listening to me and my mom try and talk.

7 Q That was months before July?

8 A Yes. And in July, just couldn't take it
9 anymore. I was so stressed with school, and I was just
10 trying to do my best, but it was getting to me. So I
11 decided, I can't do it anymore. I'm not -- I can't let
12 him do this to me, it's not right. That's when he
13 wanted to tell her. But, he decided, no, I'm going to
14 go do it first. So, after that, he left.

15 Q Was there a point that you realized it was not
16 right, as you say?

17 A Yeah. The first time I tried to tell my mom
18 was about four months before July, I had tried to tell
19 her. I was like I was super upset. I was crying in my
20 room. I was like, of course, a teenager throwing
21 stuff. I was really, really upset. So I was mad, and
22 I was yelling and I was a crying, and I was just
23 completely not myself. I wasn't -- I just wasn't
24 there. And I tried to tell her, and he was just

1 standing over, staring at me trying to go make sure
2 that I didn't never say anything to my mom.

3 Q Who did most of the discipline in the house?

4 A Mostly my mom but it was my mom texting TJ and
5 telling him put them in their room. They didn't do the
6 dishes because I'm not there. Or she would text me my
7 brother and say go to your room. I'll talk to you when
8 I get home. Or I'll talk to you in the morning before
9 you go to school and tell you what happened.

10 Q So, you mentioned that there was, this happened
11 very frequently, correct?

12 A Yes.

13 Q Okay. Were there any other times you remember
14 specifically that we haven't discussed?

15 A No.

16 Q On all those times this happened, is this
17 something that you wanted to happen?

18 A Never.

19 Q How old were you when this, when most these
20 things happened?

21 A I was -- I do believe almost 13.

22 Q Were there some that happened when you were
23 older?

24 A It went on until July which was days away from

1 my birthday.

2 Q What birthday would that have been?

3 A My 15th.

4 Q So happened when you were 14 as well?

5 A Yes.

6 MR. MERRILL: Thank you HS. Pass the witness,
7 Your Honor.

8 THE COURT: Wrong pipe. All right.

9 So we're go to take a break, ladies and
10 gentlemen. Like I said, we break about every hour to
11 hour and a half. It's been about hour 20 minutes. So,
12 we'll take a quick break and then the defense will be
13 able to ask some questions. Okay?

14 All right. But, during the recess we're about
15 to take, you're admonished that it is your duty not to
16 discuss among yourselves or with anyone else any matter
17 having to do with this case.

18 It is your further duty not to form or express
19 any opinion regarding the guilt or innocence of the
20 defendant until the case has been finally submitted to
21 you for decision.

22 You are not to read, view or listen to any
23 report, newspaper, radio, television or internet
24 concerning this case, nor allow anyone to read or

1 comment upon it in your presence. This includes
2 viewing any type of social media relating to the case.

3 You are not to investigate or attempt to obtain
4 any additional information about this case outside the
5 courtroom.

6 Do not visit the scene or attempt any
7 investigation on your own. Do not read any legal text
8 or book regarding any issue raised in court. Should
9 any person attempt to discuss the case with you, or in
10 any manner attempt to influence you with respect to it,
11 you are to advise the bailiff, who will in turn advise
12 the court, and I'll take care of it.

13 Take 15 minutes, folks.

14 (Jury exits.)

15 THE COURT: Stay right there for a minute,
16 okay?

17 Okay. Now you can go, HS.

18 And then come back when Mr. Merrill tells you
19 to. Okay?

20 THE WITNESS: All right.

21 THE COURT: All right. Thank you.

22 Anything to bring before the court?

23 MR. KALTER: No, Your Honor.

24 MR. MERRILL: No.

1 THE COURT: Okay. Court's in recess.

2 (Recess.)

3 THE COURT: All right. So anything to bring
4 before the Court?

5 MR. KALTER: No, Your Honor.

6 MR. MERRILL: No, Your Honor.

7 THE COURT: Please bring in the jury.

8 (Jury enters.)

9 THE COURT: Counsel, stipulate to the presence
10 the jurors?

11 MR. MERRILL: Yes, Your Honor.

12 MR. KALTER: Yes, Your Honor.

13 THE COURT: Okay. Mr. Kalter.

14 MR. KALTER: Thank you.

15

16 CROSS-EXAMINATION

17 BY MR. KALTER:

18 Q Good morning, HS?

19 A Good morning.

20 Q Doing all right?

21 A Yeah.

22 Q Okay. So, it's -- you're 16 now, today?

23 A Yup.

24 Q And your birthday's July 20th?

1 A Yes, sir.

2 Q Okay. You would agree that it's been about a
3 month since you and I spoke in a similar format,
4 correct?

5 A September.

6 Q September 28th, sound about right?

7 A Yup.

8 Q Okay.

9 A How could I forget.

10 Q That's true. How could you forget.

11 So, I learned something today, that you now
12 have moved out from your mom?

13 A Yes, sir.

14 Q And that happened since we last spoke about a
15 month ago?

16 A Yes, sir.

17 Q Okay. You had mentioned that if you moved out
18 because you and your mom were butting heads?

19 A Yes, sir.

20 Q What's going on there?

21 A I just having arguments, and with everything
22 going on, I just didn't think it was good environment
23 for me to be in.

24 Q Why? What was the problem?

1 A We were just arguing every day. I just
2 couldn't handle, couldn't handle it.

3 Q Like about what kind of stuff?

4 A Like everything.

5 Q Was she like enforcing rules that you didn't
6 like?

7 A No. I was fine with everything. It's just
8 like, every time I would say, Hey, can we go do this?
9 She'd put it off. And I would keep asking her to go do
10 it. And she'd get really mad at me.

11 I don't have my permit. I'm 16. I could have
12 had my hours done by now, but she's put it off. And
13 like she puts off a lot of things, and she just doesn't
14 want to do them with me.

15 Q So you wanted to get your permit?

16 A Yup.

17 Q You can get your permit at 16 now, right?

18 A Yes, sir.

19 Q Nice. And your license at 16 and a half?

20 A Since I'm so late at getting my permit, I think
21 it's 17 and a half.

22 Q So, you are living with your dad again?

23 A Yes, sir.

24 Q How's that going?

1 A It's awesome.

2 Q Good. Good.

3 So, okay. Let's back up a little bit here.

4 You previously, before living with TJ and your mom, and
5 them getting married, you lived with your dad before,
6 right?

7 A Yes, sir.

8 Q And at some point that changed and you moved
9 back with your mom?

10 A I lived with my dad's sister for a few years.
11 And after that, I was with my mom. And then my dad
12 wanted to come back, and she got restraining orders
13 against him.

14 Q So, but, you moved in with your mom from her
15 sister, or your dad's sister?

16 A My dad's sister, yes.

17 Q Okay. Was she with TJ when you, when this all
18 happened, you moved back with your mom?

19 A Yes, sir.

20 Q And it sounds like you really liked your dad
21 and always have; is that right?

22 A I'm a daddy's girl. What can I say.

23 Q Okay. So, it must have been kind of weird, or
24 strange?

1 A It was difficult, for a while.

2 Q So, it had to have been difficult?

3 A Yeah.

4 Q Going from the person you wanted to be with
5 which was your dad?

6 A Yeah.

7 Q To TJ, who you barely knew, who's married to
8 your mom and now is kind of head of the household,
9 right?

10 A Yeah.

11 Q Yeah. How did that make you feel?

12 A I was a little bit upset about that. I was so
13 young I didn't know what was actually going on. Until
14 like got older and figured everything out, and just
15 figured out why.

16 Q So, about how old were you when TJ came into
17 your life, so to speak?

18 A I was around 11 I do believe.

19 Q Okay. So, would it be fair to say you lived
20 with TJ and your mom for a couple years at least?

21 A Yeah.

22 Q Now, the whole time you lived with your mom
23 while TJ was there, was that the same house?

24 A No. We lived in different houses. We lived in

1 Mason, and then we moved to the 610 house.

2 Q Living at the 610 house, was that the majority
3 of your time living with TJ?

4 A It was about the same at both house. Me and my
5 brother shared a room for a while. And then we had to
6 get separate rooms of course because we were getting
7 older.

8 Q Right?

9 A So we had to move.

10 Q And so how old were you when you moved into the
11 610 house?

12 A I do believe I was 12 and a half.

13 Q Okay. At any point in time while you were
14 living in the 610 house, did -- at any time, did people
15 live there other than you, TJ, your mother, OS?

16 A Nope.

17 Q So there was never a time when another woman
18 had a room there, or another man had a room there?

19 A No, sir.

20 Q Okay. Was it -- it's fair to say that TJ, for
21 the time you lived with TJ was the disciplinarian in
22 the house?

23 A It was mostly just my mom texting him to tell
24 us to do something, or she would text, and say I'll

1 talk to you about it. I'll talk to you about it
2 tomorrow, while she was at working on her break. She
3 would text me and my brother, tell us go to our room.
4 And I'll tell you what you did in the morning because
5 she worked her graveyard shifts.

6 Q How would she know to tell you to go your room
7 like?

8 A Well, I would text my mom, and say, OS did
9 this, he's not sharing. We only had one Play Station.
10 And so, we were required to share it. So on the
11 weekends we get up every morning like 5:30 to see who
12 was up first to go play it. We were butting heads on
13 that. So we had one Play Station. We got into a big
14 argument. And so I called my mom, and I holder her,
15 Hey, O's not sharing the Play Station. What do I do?
16 She's like both of you go to your rooms, no more Play
17 Station.

18 Q You guys didn't have games with two players?

19 A We did, we like playing single players most of
20 the time.

21 Q Okay.

22 A Split screen was too small.

23 Q So, was it fair to say that at least while you
24 lived in the 610 house, TJ was home with you guys more

1 than your mother?

2 A Yes, sir.

3 Q Okay. And that was because your mom worked at
4 Dini's?

5 A She had very flip-floppy schedules, so she was
6 days and nights.

7 Q So, like let's take the school year of 2018 in
8 the fall through the spring of 2019?

9 A Okay.

10 Q How would you guys get to and from school?

11 A The bus.

12 Q Okay.

13 A Because we lived so far out of town, we would
14 have to be driven the bus stop every morning. We'd get
15 on the bus, and then we'd go on our bus route and we'd
16 go to school.

17 Q So TJ would take you guys?

18 A To the bus stop, yes.

19 Q Now, that year in school, you were in what
20 grade?

21 A I was a freshman, 2018, 2019.

22 Q Okay. And around December of that year, you
23 had a boyfriend?

24 A Yes.

1 Q Okay. And you had gotten -- you and he had
2 gotten in trouble at school for some incident?

3 A Yeah.

4 Q At the bleachers or something?

5 A I can't forget that. That was the most stupid
6 thing ever.

7 Q Fair enough. But, you got in trouble, right?

8 A Yeah.

9 Q Got APEP?

10 A For kissing him, yeah.

11 Q And had he -- your mother's Patty, right?

12 A Yes.

13 Q And TJ were involved with this, the school
14 notified them?

15 A Yes.

16 Q Okay. And they grounded you?

17 A They didn't exactly like ground me. They just
18 like, You can't do a lot of things.

19 Q That you would normally want to do?

20 A Yeah.

21 Q So, one of those things they made you do or
22 told you to do, was break up with the boyfriend, right?

23 A Yes.

24 Q That couldn't have made you happy?

1 A No, I was a rebellious child, at that time, at
2 least.

3 Q Me too.

4 You continued on with the relationship with him
5 for a couple weeks after they told you to break it off?

6 A Yes.

7 Q And your parents, or not your parents. Your
8 mother and TJ learned that you guys were still
9 communicating?

10 A Yes.

11 Q Isn't it true that during this period of time
12 you and your boyfriend began to start rumors that TJ
13 was touching you inappropriately?

14 A I didn't start any rumors.

15 Q Did your boyfriend?

16 A I don't know.

17 Q So, you know nothing about what I'm talking
18 about?

19 A I know nothing of what you are talking about.

20 Q Okay. And so, isn't it true that TJ was the
21 one in fact that made you finally break up with your
22 boyfriend?

23 A Yes.

24 Q And he -- you were messaging -- What do you

1 use, Instant message?

2 A Instagram.

3 Q Instagram. And you can message?

4 A Yeah.

5 Q Live chat with people on Instagram, right?

6 A Yeah.

7 Q And so isn't it true that TJ stood there, and
8 made you like type you're breaking up with this guy?

9 A He told me this is what you are going to type
10 when I say it, and you are going to send it to him.

11 Q Okay. So he's like, This is for real now,
12 you're typing him?

13 A Yeah.

14 Q We're done?

15 A Yes, sir.

16 Q That must have not been cool?

17 A No, it actually wasn't.

18 Q And I imagine that didn't make you like TJ very
19 much?

20 A No.

21 Q That's fair.

22 Okay. You talked about these messages, but
23 isn't it true that TJ also would give your mom
24 messages, and 18 OS sometimes messages?

1 A I'm not sure. My brother never told me about
2 that. My mom never told me about that.

3 Q Okay. That's fine. I only want you to tell me
4 what you know. Would your mom ever complain of aches
5 and things like that?

6 A She has arthritis, so, I would imagine so, yes.

7 Q So, you are 14 years old. What's going on with
8 these sore legs of yours?

9 A I was, when I was around -- when I was little
10 when I would walk, I would hit my knees together really
11 hard. And that's just how I walked. And so now I
12 suffer the consequences of my knees tightening up, and
13 just trying to make me fall. And I was required
14 because my classes, they were so spread far apart
15 across the school. I was required to walk back and
16 forth. From one side of school the to the other, back
17 to that side, back to the other side. Every day.

18 Q Uh-hum.
19 With a heavy bookbag?

20 A Yes.

21 Q Freshman year they load the books, hum?

22 A Oh, yes, they do. And I don't like using a
23 locker because I forget it's there. And I can never
24 remember the password.

1 Q So, I'm sure you told whoever at home was
2 listening, that, Hey my legs are hurting. This stinks,
3 bookbag --

4 A I would complain to my brother about it. If he
5 was there, I would be like, "My legs hurt so bad right
6 now. I'm just going to go lay down."

7 Q And so, we talked last time, I asked you, why
8 you didn't put this CBD lotion or whatever was on your
9 legs yourself?

10 A I didn't like it. It didn't do anything for
11 me.

12 Q Do you agree you told me the last time, you
13 didn't put it on because your arms are too short?

14 A Like I could reach it. But I was lazy, and my
15 legs.

16 Q Okay. Do you agree the last time we spoke that
17 I asked you, "Okay. And did you yourself ever rub your
18 legs to try to make them feel better? And you said,
19 "No, because I couldn't do it right. I couldn't rub my
20 legs at all. It's, my arms are too short."

21 A To lay down and do it, yes, my legs are too
22 short. But, I didn't use that lotion because I didn't
23 like it. It didn't smell very good to me.

24 Q There were times you asked TJ to massage your

1 legs, correct?

2 A Only my calves. Not anything above my knees.

3 Q I understand that. But there were times when
4 you would ask him to massage your calves?

5 A Yes.

6 Q And on the days that your legs hurt?

7 A I asked him maybe once or twice. And then
8 after that, I didn't.

9 Q Okay. HS, I want to turn to July 14th, 2019,
10 okay?

11 A All right.

12 Q Okay. Thank you.

13 So your birthday is on July 20th, so this is
14 six days before your birthday?

15 A Yes, sir.

16 Q You were hoping for your birthday to have like
17 some kind of pool party with some friends and stuff?

18 A My mom had just gotten a pool from one of her
19 bosses, and they weren't going to use it so they gave
20 to us because we had so much land. And we were
21 planning on setting it up. Everybody kept putting it
22 off, really annoys me when people put stuff off for so
23 long and it never gets done. So I'd asked him about
24 it. I said, "Okay. I understand after you said no."

1 I went to my room.

2 Q And you guys had a fight about it, right?

3 A Not about the pool.

4 Q Is it you were at least very annoyed?

5 A I wasn't annoyed really at all. I was like
6 okay, I'm just going to go do my homework then, or I
7 was going to do something. I can't exactly remember
8 what.

9 Q Homework?

10 A Probably take care my turtle when I had it at
11 that time.

12 Q You said a couple times now, when people
13 procrastinate or put stuff off, it really annoys you?

14 A It annoys me with when people continuously,
15 like, "I don't want to," like every day. And it just
16 makes no sense, because they're not doing really
17 anything important, like they are just watching TV, or
18 they are just sitting around. Like, let's go do
19 something. I like nature. I like getting out of the
20 house. I didn't like being stuck in the house. Let's
21 just go do something fun. I don't like being stuck in
22 a house all day. It's really hard for me to stay in
23 the house and stay still, like I need to get out.

24 Q What, so your testimony is absolutely TJ was

1 not asking you to help with the pool?

2 A Nope.

3 Q So TJ didn't ask you to help him set up the
4 pool?

5 A No, he didn't ask me. He asked my brother
6 because my brother is a guy. Of course. And like he
7 might be a little bit stronger than me.

8 Q Okay. So, TJ asked OS to help with the pool?

9 A Yeah. To what I remember, yes.

10 Q All right. Because, now I'm a little confused.
11 I thought you were upset that they wouldn't --

12 A Well, he wouldn't --

13 Q -- set up the pool?

14 A They wouldn't. And then they just wouldn't,
15 and then they were like I just had OS do it.

16 Q What?

17 A He said in front of me, "I'll just have OS do
18 it." Like by himself. And I'm like, "He doesn't know
19 how to do that." He's like 12. He doesn't even want
20 to leave his bed -- he doesn't even want to leave his
21 bed to go get food.

22 Q OS doesn't like to leave his bed to get food?

23 A He likes playing video games all day.

24 Q So, okay. So did OS go out and start to set up

1 the pool?

2 A No.

3 Q Did OS refuse?

4 A No, OS just didn't do it. He didn't refuse, he
5 just ignored him.

6 Q Okay.

7 So, at some point that day you and OS, OS
8 playing video games, you're watching him?

9 A Yes, sir.

10 Q Okay. So, that in the living room?

11 A Yes, sir.

12 Q Okay. And you guys are about five feet apart?

13 A Yes, sir.

14 Q And TJ comes in, and starts to what, massage
15 your leg?

16 A Yes, sir.

17 Q And there was no blanket on top of you or
18 anything like that?

19 A No, sir.

20 Q I believe you testified Mr. Merrill was asking
21 you questions, that it lasted about five to ten
22 minutes?

23 A Depending on -- yeah, it would last five to ten
24 minutes, depending if my brother walked in the room.

1 Q Well, let's just talk about this incident on
2 the couch on the 14th of July, last year?

3 A It only lasted about five minutes.

4 Q Okay. And the five minutes, is that including
5 what you say he was touching your private parts?

6 A Yes, sir.

7 Q For five minutes?

8 A Well, he was -- it includes the massages of my
9 legs and then me telling him no. After maybe like 30
10 seconds to two minutes.

11 Q So walk me through this, please.

12 Did he start to massage you like a normal
13 massage?

14 A No, he just started like grabbing my legs and
15 massaging them like for no reason. I was just sitting
16 there, watching my brother play the game. My legs
17 weren't hurting, it was summer. I was relaxing and he
18 just started randomly rubbing my legs.

19 Q Okay. How long did that last?

20 A Maybe three to five minutes.

21 Q Okay. Did you pull your legs away?

22 A Yeah. Once. And he just didn't take the hint.

23 Q So, how were you positioned on this couch?

24 A I was sitting down, laying down.

1 Q Sitting down, laying down, what?

2 A I was relaxed, so I was like slumped over
3 laying down kind of thing.

4 Q Were your feet, or excuse me. Were your legs
5 like propped up on the cushions?

6 A One of them was, one of them was on the couch
7 like the sitting part of it.

8 Q So, he starts to massage your legs, you're
9 saying. Your calves was it?

10 A Yes.

11 Q How long did that last before you say it turned
12 inappropriate?

13 A Maybe three minutes.

14 Q And you stated you told him to stop?

15 A Yeah.

16 Q Okay. Did you get up off the couch?

17 A Yes.

18 Q You did?

19 A I tried to. I like got up, and then I got
20 down, because he was like right in front me, as I was
21 standing up.

22 He got up off the couch, stood right in front
23 of me as I stood up.

24 Q Was this before or after he -- the massage you

1 say turned inappropriate?

2 A After.

3 Q Okay. So, he -- and then you say you sat back
4 down?

5 A And then I got back up, went around him, went
6 to my room, closed the door.

7 Q So, when you the got up off the couch, you
8 never sat back down?

9 A I like fell back down, kind of thing, because I
10 lost my balance. So I kind of sat back down. And then
11 I got back up, and went around him.

12 Q About how long was the actual inappropriate
13 touching?

14 A Maybe 30 seconds to a minute and a half.

15 Q Okay. As soon as he started to touch the area,
16 did you get up right away?

17 A I got uncomfortable, and used my leg to push
18 his arm away. And he just wouldn't stop, and kept
19 doing it. And so I finally pushed him away and got up.

20 Q Did you -- so OS didn't have headphones on,
21 right?

22 A No.

23 Q So, he must have heard this kind of ruckus, no?

24 A He heard the arguing back and forth and then

1 yelling and the crying.

2 Q On the couch?

3 A No, he heard -- after I went to my room, TJ
4 came in started yelling at me.

5 Q I'm talking about when you were on the couch
6 and when you say Mr. Bernal was touching you
7 inappropriately. It sounds, if I understand your
8 testimony right, that you are kind of kicking away, you
9 are saying no?

10 A I didn't say anything, because my brother was
11 right there. And he didn't know anything that was
12 going on. So I pushed his arm away with my leg. Kept
13 going. Did it again, kept going. I did it again and
14 then I got up.

15 Q And OS paid no attention to this?

16 A Yes.

17 Q And you decided not to in some way notify OS so
18 that maybe it stopped?

19 A I didn't want him to be involved. It's my job
20 as big sister to protect him from this sort thing.

21 Q So, then this turned into an argument?

22 A Yes, sir.

23 Q A fight with TJ?

24 A Yes, sir.

1 Q And at some point in time did he try and take
2 your phone from you?

3 A No.

4 Q Okay. You had threatened to tell him that you
5 were going to tell your mom he was -- "You were
6 fingering me"?

7 A I said, "I'm going to tell my mom as soon as
8 she walks in the door." And that's when he decided,
9 no, I'm going to be the first one to tell her.

10 Q And HS, in fact, you did tell your mom?

11 A After he had confessed to her that it had
12 happened. She called me into her room asked me about
13 it.

14 Q Let's be clear about something. You did not
15 hear their conversations you testified earlier?

16 A I did not.

17 Q Okay.

18 A But, I did --

19 Q But I only want you to tell me what you
20 personally heard, okay?

21 A That he said that he was going to confess to my
22 mother as soon as she walked in the door, and that he
23 was texting her the entire time that we were arguing.

24 Q Okay. But you did not hear the conversation

1 that took place when she got home between him and TJ?

2 A I heard muffled yelling, that's all.

3 Q Fair enough. Okay.

4 And you told your mom at that time that this
5 had been going for the past six months, right?

6 A I told her that it had been going on since we
7 moved into that house.

8 Q And how long had you moved in that house?

9 A Since I was about 12 and a half, almost 13.

10 Q So, almost 12 and a half, almost 13?

11 A Yes.

12 Q So, on July 14th of 2019 you are almost
13 15 years old?

14 A Yes, sir.

15 Q So then I'm not great at math but I'm saying
16 that that's a couple years maybe?

17 A Yes, sir.

18 Q Okay. So you did not tell your mom that it had
19 only been going on for six months prior?

20 A I told her when she asked, I had told her it's
21 been going on ever since we moved into this house.

22 Q Okay. Do you recall an interview you did with
23 a Jennifer McCann?

24 A Yes, sir.

1 Q Okay. And you've testified similarly to this.
2 But you told her, it had been happening about five
3 times a week for a couple of years?

4 A Yes, sir.

5 Q Okay. And that interview with Ms. McCann was
6 obviously after you told your mom on July 14th?

7 A And after the investigation started.

8 Q So you testified previously that some incidents
9 involved or happened when your mom was home?

10 A Two of the incidents happened when my mother
11 was home, in the shower. And the rest of them happened
12 while she was at work.

13 Q Okay. And OS was home for all of these, right?

14 A Yes, he was.

15 Q Okay. And the times in which your mother was
16 home, you didn't tell her about them?

17 A As I stated previously, with Matt, I stated
18 that every time I would try to tell her, TJ would be
19 either be standing in the room or in my doorway,
20 listening to the conversation, looking at me to make
21 sure that I had never said anything to my mother.

22 Q You -- TJ would get you guys ready for school
23 Monday through Thursday. But your mom would get you
24 ready for school Friday mornings, correct?

1 A Most of the time.

2 Q Because of her work schedule?

3 A Yeah. She --

4 Q -- her to get you guys ready for school.

5 A It --

6 Q -- on Fridays?

7 A It was once or twice a week she would get us
8 up. But more than all of the -- more than half of the
9 time I woke up myself to my alarm that I had set half
10 hour earlier than my brother was supposed to get up.

11 Q You wanted to get those video games beforehand?

12 A No, I took showers in the mornings during the
13 spring. And I always got up half our early to make
14 sure everything that I had to do was done before I went
15 to school.

16 Q Tell me about the mornings your mom would get
17 you ready for school?

18 A She'd just got off, one in the morning, hadn't
19 gotten much sleep. Because of school, we had to get up
20 at 6:30. But of course, half an hour early, me being
21 that type of person. And she would wait. She would
22 get up at 6:30, get my brother up, out of bed. He'd
23 get dressed. She'd be everywhere, making coffee, like
24 checking on us to make sure we were ready. She was

1 running around the house.

2 Q She would take you to the bus stop, right?

3 A Yes, she's would.

4 Q Okay. And so you would agree with me, you had
5 times with her over these two years, which you were
6 alone with your mother?

7 A It wasn't much time at all, because she had
8 worked so much.

9 Q Okay.

10 A She got less than I do believe she said eight
11 hours a week with us. She got less than that with us.

12 Q But you would agree with that you had time
13 alone with your mother, where TJ was not present?

14 A Yes, but, you have to understand that my brain
15 was not working at six in morning, had just gotten up,
16 everything's me waking up. My brain doesn't start
17 working until I get to school. So, I thought nothing
18 of it.

19 And also, I had stated that I felt like she was
20 going to be disappointed in me and she wasn't going to
21 believe me if I told her.

22 Q Okay.

23 You -- you've described events happening in
24 your home in which case OS would be home, or OS and or

1 your mother would be home. But, TJ never took you to
2 some secluded place, outside of the home for do these
3 alleged acts?

4 A No, sir. He said that, "You are in a safe
5 environment, and I'm trying to help you to do this, so,
6 this house is your safe environment for me to help you
7 to do this."

8 And I never once asked for his help in that.

9 Q When you testified earlier today about this
10 fight with TJ on July 14th, you said kind of like
11 things are just boiling over for you?

12 A Yes, every time I would start to calm down, he
13 would come in and yell at me some more, and then leave
14 and go back into the living room. Shut my door, and
15 then 10 to 15 minutes later he'd come in and do it
16 again.

17 Q You said that you were stressed out about
18 school, and that kind of lead to you --

19 A Yes.

20 Q -- finally telling your mom that day?

21 A Well, for the past months since school had
22 ended I just got done with my finals, and I was trying
23 to make sure I was passing everything, that I had
24 gotten my passing grades on all my finals. And I was

1 like trying to make sure I was going to be able to move
2 to the next grade.

3 Q Okay. You didn't know whether you had passed
4 the grades, the grade that you were in on July 14th?

5 A Found out, that, hey, this is when school
6 starts, you're a junior now, or your sophomore now, or
7 whatever grade.

8 Q It sounds like you get pretty good grades?

9 A I do.

10 Q And you've always gotten pretty good grades,
11 right?

12 A Yes, sir.

13 Q Good.

14 So we know about July 14th being the time in
15 which you told your mom about this, right?

16 A After TJ had confessed to her that it had been
17 going on, I told her.

18 Q Have you testified that he told you he was
19 going to?

20 A Yes, and then my mother, when she called me
21 into that room --

22 Q Right?

23 A -- to tell her. She said --

24 Q I don't want to know what she said?

1 A This is what he just told me.

2 Q I don't want to know what your mom said.

3 A Okay.

4 Q I understand what you are saying TJ told you.
5 That's clear.

6 Do you remember telling Jennifer McCann that
7 you had told your mother that he was touching you
8 inappropriately, once when you were 13, and once when
9 you were 14.

10 A No, I don't remember that.

11 Q Is it true that you told your mom once when you
12 were 13 and once when you were 14 that he was touching
13 you inappropriately?

14 A I had tried to tell her, I never told her. I
15 tried. But he decided I'm going to stand in the
16 doorway, and I'm going to listen to this conversation,
17 make sure that doesn't come out of her.

18 Q Okay. So, if I understand your testimony
19 right, you wanted to --

20 A I wanted to tell my mother --

21 Q But you didn't?

22 A -- what was going on.

23 Q But you did not tell her?

24 A I couldn't.

1 Q You couldn't say, Hey mom, can I talk to you
2 alone?

3 A That's what I had done. And he decided to step
4 in, and listen to our entire conversation.

5 Q And your mom wouldn't say, Hey, let's go talk?

6 A No, he wouldn't leave the room. He wouldn't
7 leave the doorway. When I was telling him to leave,
8 like I was screaming at him, telling him just get out
9 of here already. Like let me talk to my mom in peace.

10 Q So your mom just did nothing?

11 A No, she didn't do anything.

12 Q Okay. So, lets back up now, to when you say
13 the first time this happened was?

14 A One or two months after I moved into that
15 house.

16 Q Okay. Were you a freshman?

17 A I was about to be in my freshman year. I had
18 freshman orientation in August.

19 Q So today you testified that, and you can
20 correct me if I'm wrong. But the first time it
21 happened and you say TJ was putting his foot between
22 your legs?

23 A Yes.

24 Q Okay. And did that involve a massage at some

1 point, or what?

2 A No, that didn't involve any of that.

3 Q So what happened? Where were you guys?

4 A In the living room.

5 Q Okay. And where was OS?

6 A In his room, I do believe.

7 Q And was this on a couch?

8 A No.

9 Q Where was it?

10 A At his computer desk.

11 Q TJ?

12 A Yes.

13 Q You were on his computer or what?

14 A No. Like I stated earlier, there was a red
15 chair and then a black one, in like behind his chair.
16 So I was sitting in the black chair. I scooted closer
17 to see the computer screen. He decided to put his foot
18 right there.

19 Q Okay. And what did you do?

20 A I thought nothing of it. I didn't know.

21 Q And how long did it last? What happened?

22 A Maybe ten minutes, and then I got up to go take
23 a shower.

24 Q So, if I understand you correctly, you didn't

1 know at that time that there was something
2 inappropriate going on?

3 A I did not. I didn't understand what was going
4 on.

5 Q I thought the first time that this happened was
6 he was going in for a hug, telling you I'm going to
7 give you a hug, and then didn't give you a hug?

8 A I don't remember that.

9 Q Okay. Do you remember talking to Ms. McCann
10 about that?

11 A I don't really remember anything. But, I
12 talked about it to her. I can't remember specific
13 details.

14 Q So, the one you describe when you are in
15 Ms. Mueller's class?

16 A Mueller.

17 Q Mueller?

18 A Yes.

19 Q Sorry about that?

20 A That's okay.

21 Q So what grade were you then?

22 A I was a freshman.

23 Q Okay. So, this is one in your bedroom?

24 A Yes.

1 Q Okay. And you said that one lasted five
2 minutes?

3 A Yeah.

4 Q How is it that you remember that particular
5 incident when you are saying this is happening five to
6 six times a week for two years? What, how do we
7 specifically get to this incident that you recollect?

8 A I specifically remember some times, not others.
9 It's my -- me trying to block out what is has happened
10 to me, and what he has done to me. And I'm trying to
11 block it out. And I can't remember most of everything.

12 Q Okay. You talked about an incident where TJ
13 said he was going to take your video games away if --

14 A If he wasn't allowed to sexually assault me, he
15 was going to take the thing I loved most away from me.

16 Q And your mom was in the shower?

17 A Yes. Or no.

18 She wasn't even home. Where'd you get that
19 shower from".

20 Q Hum?

21 A Where did you get that shower from? Those
22 shower times was when like that only lasted maybe five
23 minutes.

24 Q I got them from my notes, from your testimony.

1 But they may be wrong. You're saying it doesn't, she
2 wasn't home in the shower?

3 A It only -- when she was in the shower, there
4 were two times when it happened when she was home and
5 then the rest of it happened when she wasn't home.

6 Q And this is the time he threatened to take the
7 video games away?

8 A Every time that he would sexually assault me,
9 he said, "If you don't let me do this, I'm going to
10 take away -- I'm not going to let you play video
11 games."

12 Q So, now, it's every time the video game thing
13 was used?

14 A Everything I loved was used against me.

15 Q So, he says -- so, this thing with the video
16 games, he says, "I'm going to take your video games
17 away." Then how does this lead to you being touched
18 inappropriately?

19 I mean, you didn't walk out of the house, you
20 didn't --

21 A I went to my room. I walked away. And he
22 decided, well, since I'm going to say this, and I'm
23 going to be like I won't let you play video games until
24 I get to do it. He walks into my room and does it.

1 Q So what happens when he walks up to you?

2 What do you do?

3 A I was laying down. I was listening to my music
4 in my bed. And he went up, sat on my bed and started
5 touching me.

6 Q Did you pull your legs away?

7 A Yes, I backed away from him. I pushed, I
8 pushed his arm away multiple times with my leg.

9 Q But he was able to with you pushing his leg,
10 with you kicking her legs and things, he was able to
11 actually get a finger inside of you?

12 A He wouldn't stop. He doesn't know how to stop.

13 Q You testified that there was an incident where
14 your mom was cooking all day?

15 A She put dinner in a slow cooker, and left it in
16 to cook all day to make sure because it was pork and it
17 can give you very bad illnesses, and sicknesses. So
18 she wanted to make sure it was thoroughly done by the
19 end of the night. And so she put it in. And she was
20 cleaning the house all day. And by the end of night,
21 when it was nearing the time for dinner, she was wanted
22 to go take a shower. So she did. And he walked into
23 my room, and sexually assaulted me.

24 And then got scared, when he heard their

1 bedroom door closed and left my room as fast as he
2 could.

3 Q And then what happened the rest of the night?

4 A He acted like nothing happened.

5 Q What did you do?

6 A I stayed in my room. My mom knocked on my
7 door, and handed me I plate of food, and I stayed in my
8 room all of that night.

9 Q Was TJ right behind her when he handed you the
10 food, she handed you the food?

11 A No. But he was sitting nearby to where if I
12 told her anything, he would hear.

13 Q At the very beginning of your testimony when
14 Mr. Merrill was asking you questions, about the
15 July 14th incident, and when he first touched you on
16 the couch, you stated, "I didn't think anything like
17 that would --" strike that. "I didn't think anything
18 would happen like that"?

19 A I never thought anything of it. Every time I
20 didn't think anything. I -- I wasn't the smartest kid
21 either, didn't catch on to things quickly.

22 I did not even realize what was going on.

23 Q So, that just struck me. Because this is the
24 last time it happens, on July 14th, and you state, I

1 didn't think anything like that would happen?

2 A Because he was supposed to be a person I
3 trusted. Because he was -- he made my mom happy, so, I
4 thought I could trust him. And he did this stuff to
5 me, and it's not okay.

6 Q Okay. I just didn't understand if it happened
7 five or six times a week for two years, on the very
8 last time why you would think nothing like that could
9 happen.

10 A Because I didn't. I didn't think anything of
11 it. I didn't think anything of it, any of the times he
12 did it, because I trusted him.

13 MR. KALTER: Thank you for talking to me.

14 Pass the witness.

15 THE COURT: Mr. Merrill.

16

17 RECROSS-EXAMINATION

18 MR. MERRILL:

19 Q HS, just a few followup questions. Bear with
20 me.

21 So on July 14th, 2019, your mom comes home,
22 correct?

23 A Yes, sir.

24 Q And some sort of conversation that happens in

1 the master bedroom, correct, between the defendant and
2 your mother?

3 A Yes, sir.

4 Q Now, your mom comes back in, and she talks to
5 you at some point?

6 A Right after he left that room my mom said, "HS,
7 come here. I need to talk to you."

8 So I go into the room. And she closes the
9 door, and she says, "Did he really do this to you?"

10 I said, "Yes, so for long."

11 And she was like, "I didn't even know."

12 Q Was -- did you see the defendant leave prior to
13 going into see your mom?

14 Like had he -- let me rephrase.

15 Had he left the house?

16 A I do believe he had. And then she had asked
17 me, and then he called me and my brother into the
18 living room and said, "I'm so sorry I put you guys
19 through all this hell all these years."

20 Q We talked a little bit on cross, about the
21 times in the shower?

22 A Yes.

23 Q There was two times, correct?

24 A Yes.

1 Q Okay. And then the defendant sexually
2 penetrated you on those times?

3 A Yes.

4 Q Was that against your will?

5 A Yes.

6 Q Now, we've heard a lot about your mom, your mom
7 she was employed at Dini's here in town?

8 A Yes, sir.

9 Q Is that correct?

10 So she was busy quite often?

11 A She worked graveyard shifts most of the week
12 and then had maybe one or two day shifts.

13 Q Now, if you know, was the defendant employed
14 during this 2018-2019 period?

15 A I do believe he was, but then left his job.

16 Q But during that entire time, was he the one
17 that was responsible for mostly picking you up from the
18 bus stop, and doing things of that nature?

19 A Yes, sir.

20 Q So he would be home quite frequently without
21 your mother around at all, correct?

22 A Yes.

23 Q Now, I want to talk about where your, your
24 bedroom is in relation to the living room?

1 A Okay.

2 Q If someone is in your living room, can you see
3 directly into your bedroom?

4 A Unless you are -- because there is a door, if
5 you are like to the door, halfway up the living room
6 where the couch is, bottom half. And if you go --
7 because there is a door there, and it's got like mesh
8 wiring for screens. So you could see my door was open.
9 And if you are halfway up the living room until the TV
10 and. Right in front of the window, that's -- your
11 vision is you can see into my room, only part of my
12 room, because my room was pointing to the side of the
13 house, not like in the front.

14 Q So, is it -- Would you agree that it's not a
15 clear direct shot from the living room into your room?

16 A It's not clear to my bed at least.

17 Q Now, you stated on cross, you stated that he
18 doesn't know how to stop. What did you mean by that?

19 A Every time I would tell him to stop, he
20 wouldn't. Every time I would push him away, he just
21 would just keep coming back and keeping doing it to me,
22 and he wouldn't stop.

23 Q At some point did you just give up?

24 A At one point, I was just done. I just didn't

1 want to deal with it anymore.

2 I didn't give him permission at any of these
3 times. I the didn't give him any permission to do it.

4 MR. MERRILL: Thank you.

5 THE COURT: Okay. Thank you, HS. You can get
6 up now, okay? So, please put on your mask and go
7 outside. Thank you.

8 Next witness, Mr. Merrill.

9 MR. MERRILL: Patricia Bernal.

10 THE COURT: Ms. Bernal, please come forward.
11 Stand right there, raise your right hand, be sworn by
12 the clerk.

13 (Witness sworn.)

14 THE COURT: Come on around here, have a seat in
15 the witness chair, please, ma'am.

16 Please don't sit there. Please do not sit
17 there. One row back.

18 Okay. Go ahead, Mr. Merrill.

19 MR. MERRILL: Good morning.

20 THE COURT: You can remove your mask, please.

21 THE WITNESS: Thank you.

22 ///

23 ///

24 ///

1 PATRICIA ALICE BERNAL,

2 called as a witness herein by the State,

3 having been first duly sworn, was examined

4 and testified as follows:

5
6 DIRECT EXAMINATION

7 BY MR. MERRILL:

8 Q Please state your full name and spell your last
9 name for the record?

10 A Patricia Alice Bernal. B-E-R-N-A-L.

11 Q And please tell me about your family?

12 A I have a son, and a daughter.

13 Q And what is your children's names?

14 A HS and OS.

15 Q Okay. And HS, how old is HS now?

16 A She just turned 16.

17 Q And tell me about HS, about her personality?

18 A She's a very smart fine young lady. She's very
19 helpful most of the time. She exceeds in everything
20 that she tries to do. She keeps her head straight as
21 best she can.

22 Q And what about OS, how old is OS?

23 A OS will be 14 here next week. He's a good kid.
24 He struggles with school, but he's doing good.

1 Q Where is, what grade is he in?
2 A He's in eighth grade.
3 Q Okay. And what's school?
4 A Yerington Intermediate School.
5 Q I see. Okay.
6 And what does OS like to do for his hobbies or
7 for fun?
8 A Play video games or play around with the dog
9 outside.
10 Q So you've got a family dog?
11 A Yes, we do.
12 Q Has OS always played video games?
13 A Yeah, pretty much, he has.
14 Q Does he have any sort of set-up with system or
15 --
16 A He has a Play Station 4 and a big screen TV in
17 his room. He does have a headset he wears on his head
18 too, to communicate with his friends.
19 Q Okay. So he can communicate to people that
20 aren't in the same room with the headset?
21 A Yeah.
22 Q All right. So you had the two children. Any
23 other children?
24 A No.

1 Q Okay. Are you married?

2 A Correct, currently, yes.

3 Q Who are you married to?

4 A Thomas Bernal.

5 Q Is he in the courtroom today?

6 A Yes, he is.

7 Q Okay. Can you identify him by article of
8 clothing?

9 A The gentleman over there in the black suit and
10 purple shirt.

11 Q And how long have you known each other for?

12 A A long time. I can't say exactly how long.
13 But, we knew each other even before we got together, a
14 little bit.

15 Q When did you get together?

16 A It was 2011, 2012. I'm not hundred percent on
17 that.

18 Q And by the words "get together," I mean
19 together, what does that mean?

20 A We started a relationship and I moved in with
21 him.

22 Q Okay. A dating relationship?

23 A Yes.

24 Q And you moved in with him. Okay.

1 And then you knew him some time prior to
2 getting together with him?

3 A Yes.

4 Q Okay. At what point did you decide to get
5 married?

6 A We were together for around four years. We
7 were both working. We were doing good, and we were
8 happy at the time. We loved each other, and we figured
9 it would be one of the good things to do.

10 Q Okay. And you're still married today?

11 A Yes.

12 Q Now, does Mr. Bernal, or defendant, does he
13 have children?

14 A No.

15 Q Okay. And so, you have a situation with
16 yourself and you have two children. What were the
17 family dynamics like?

18 A They were kind of rough at first because there
19 was adjustment period for all of us. Because I had
20 just gotten my kids back, and I had just started a job,
21 and it was -- it was -- like I said, it was a little
22 difficult. We had to learn how to work around and work
23 with each other with everything.

24 Q Okay. When did you -- you said you got the

1 kids back. When did that happen?

2 A 2015.

3 Q Were you married prior to getting the kids
4 back?

5 A We got married right afterwards.

6 Q I see. When you first got married to the
7 defendant, you said you lived together prior to that.
8 Where did you live around 2015?

9 A I didn't have a stable -- well, I was living
10 with him in 2015.

11 Q Okay.

12 A Because we --

13 Q Where was that at?

14 A Up in Mason here in Yerington.

15 Q And the kids, when they came back to live with
16 you, did you live in that same house together?

17 A Yes.

18 Q You said that you had some stress, I guess, at
19 the beginning because you were working?

20 A Well, I was trying to find a job, and then I
21 started working. So, it made it a little bit stressful
22 trying to schedule who was going to help do like take
23 the kids to the bus, or get them from school, or do
24 the -- you know, keep up on the chores and stuff.

1 Q I see. Okay.

2 Where did you end up finding a job?

3 A At Dini's Lucky Club here in Yerington.

4 Q Okay. And what were you doing with them?

5 A I was a cashier.

6 Q When did you start that job? Approximately
7 what year?

8 A August 15th, 2015.

9 Q Okay. Now, how did you work out with -- you
10 had the kids, and then you were working. How did you
11 work out getting the kids to school and their
12 activities and things?

13 A Well, usually, depending on my shift, I would
14 make sure they got on the bus so they got to school.
15 And then sometimes after school, they'd go to the club.
16 And if I was working until 5:00 or something, they'd
17 come meet me at my work, and I'd take them home. Or
18 Mr. Bernal would go and pick them up or get them from
19 the bus stop to help me out.

20 Q Okay. You mentioned the club. I mean, what is
21 the club?

22 A The Boys and Girls Club.

23 Q Okay. So, sometimes the kids would go there?

24 A Uh-hum.

1 Q Okay. And then the defendant would sometimes
2 pick up the kids as well?

3 A While I was working, yes.

4 Q Okay. Let me take you to the 2018, 2019 area.
5 Were you working still then?

6 A Uh-hum.

7 Q And that's still at Dini's?

8 THE COURT: Is that yes, ma'am?

9 THE WITNESS: Yes, sorry.

10 THE COURT: Thank you.

11 BY MR. MERRILL:

12 Q What was the arrangement during that period,
13 2018, 2019, with the kids going to school and coming
14 home from school?

15 A There wasn't really any set arrangement. We
16 kind of just fell into doing a little bit of a
17 schedule. I mean, it wasn't really planned. Like, I
18 would work until like 1:00, and then, again, I would
19 hang out and until like 2:00, and then I'd go home.
20 And then most the time Thomas would get the kids on the
21 bus in the morning or I would do it on my days off, or
22 even when I was working.

23 Q Okay. So, did the defendant come into play
24 with the picking up the kids and dropping off the kids

1 for school?

2 A Yeah, it was mainly after he quit his job
3 mainly. He started doing it more I mean, sorry.

4 Q Okay. Do you know when the defendant left his
5 job or quit his job?

6 A I'm not a hundred percent on the year or the
7 date.

8 Q Okay. Do you recall a year?

9 A It was 2018 I think. '17. Sorry, '17.

10 Q Okay. So, when the defendant left his job,
11 unemployed, whatever, did the family dynamic change at
12 all in regards to taking care of the children, things
13 of that nature?

14 A No, just with him helping out more and taking
15 care of the kids more. Like, he was there to make sure
16 they had dinner, and they would take their showers to
17 go to bed and get up in the morning. And one of us
18 would take them to the bus. He did start helping out
19 more after he wasn't working, but it did make it a
20 little more stressful too.

21 Q And so, what were your hours -- well, did you
22 have set hours during the 2018, 2019 period?

23 A I was working -- because I was working two
24 different shifts. When I was working cashier cage, I

1 was two day shifts, which was 9:00 to 5:00. And then
2 three swing shifts, which was 4:00 to 1:00 a.m. But
3 when I went -- when I was working on the floor as a
4 slot attendant, I was from 4:00 to 1:00 o'clock in the
5 morning.

6 Q Okay. So, from 4:00 p.m., just to be clear?

7 A Yes.

8 Q Until 1:00 a.m.?

9 A -- 4 p.m.

10 Q All right. Did you have to leave to go to work
11 before you saw the kids come home?

12 A Sometimes, yes.

13 Q Now, were you living at the 610 Highway 95A,
14 Yerington address during the 2108, 2019?

15 A Yes.

16 Q Okay. And that's in Lyon County?

17 A Yes.

18 Q Did you have renters or anyone who lived there
19 prior to 2019?

20 A We had -- when Thomas was still there, we had
21 his best friend living with us.

22 Q Okay. What was his name?

23 A Her name was Marlene Nish.

24 Q What time period was that?

1 A I honestly could -- I couldn't tell you
2 accurate one.

3 Q Okay. And was that at the 610 Highway 95
4 address?

5 A Yes.

6 Q Okay. What part of the house was she in?

7 A She was in the extended part in the back.
8 There was two extra rooms in the back of the house, and
9 she lived in one of those.

10 Q I see. Is that the part of the house with the
11 back bedrooms where you have to walk through the
12 laundry room?

13 A Yes.

14 Q Okay. Is that the only entrance into those
15 back rooms?

16 A No. There's two sliding doors on the outside
17 on each side.

18 Q All right. Ms. Bernal, I'm going to show you a
19 couple of exhibits here.

20 MR. MERRILL: Madame Clerk, if you could turn
21 on the...

22 And, Your Honor, the State moves for admission
23 of Exhibits 3, 4, 5, 6.

24 THE COURT: They've already been admitted by

1 stipulation.

2 MR. MERRILL: Thank you, Your Honor. Move to
3 publish.

4 THE COURT: Yes.

5 BY MR. MERRILL:

6 Q Ms. Bernal, there's a screen right next to you
7 there towards your left.

8 A Okay.

9 Q I am going to show you what's been marked as
10 Exhibit 3. And what are we looking at there,
11 Exhibit 3?

12 A I'm looking at the front of the house we were
13 living in out on 610.

14 Q Thank you.

15 Show you Exhibit 4. What are we looking at
16 there?

17 A The living room of the house.

18 Q Okay. So, if you look off to the right of that
19 exhibit there, looks like there's a screen door. Do
20 you see that?

21 A Yes.

22 Q Okay. What is that?

23 A That is the screen door to the kids' bedroom
24 and their bathroom.

1 Q How many rooms are back down past that door
2 there?

3 A There's two bedrooms and one bathroom.

4 Q Okay. And who resides in each one of those
5 bedrooms?

6 A HS resides in one, OS resides in the other.

7 Q What room are we looking at here?

8 A The living room.

9 Q And we see towards the kind of center left it
10 looks to -- appears to be a TV. Would you agree with
11 that?

12 A Yes.

13 Q Okay. What's the setup there with the TV?

14 A It's our -- sometimes my son, OS, would play
15 games, and we would watch TV or movies there.

16 Q Now, during 2018, 2019, did that TV -- has that
17 moved when this picture was take?

18 A No.

19 Q Okay. So, that TV was there during 2018, 2019?

20 A Yes.

21 Q And we know that OS likes to -- you indicated
22 OS likes to play video games?

23 A Yes.

24 Q Okay. Is there a -- is this what you typically

1 like to use, is that TV there in this exhibit?

2 A Yeah, most of the time.

3 Q Were there any other places that he could play
4 video games?

5 A Yes. Sometimes he could play on Thomas'
6 computer when he let him.

7 Q Okay. Now, the TV here that's set up, is that
8 also just used for TV besides the games?

9 A Yes.

10 Q The screen door in the picture, was that there
11 during 2018, 2019?

12 A Yes.

13 Q Ms. Bernal, I'm going show you Exhibit 5.

14 And what are we looking at here?

15 A Living room still, but the other half where the
16 couches are set up.

17 Q Okay. So, when these photographs were taken,
18 had you moved the couches a few months prior to these
19 photographs --

20 A Yes, I did.

21 Q -- being taken? Okay.

22 Now, during the 2018, 2019 time period were
23 these couches located in different spots?

24 A Yes, they were.

1 Q Okay. How were they situated?

2 A The bigger couch was moved to this side here.

3 Q Ms. Bernal, I know you're using your hands

4 but --

5 A Sorry.

6 Q -- we're trying to record everything. So, if

7 you could just use your words.

8 A So, the larger couch was on the right side next

9 to the front door. And the smaller couch was like

10 right in front of the screen door on the left side of

11 that part of the living room.

12 Q All right. And then there appears to be

13 closest to the screen the cat. Is that a cat --

14 A Yes.

15 Q -- on there? Okay.

16 Is that your cat?

17 A Yes, that's Fido.

18 Q Looks like you had like a chase lounge --

19 A Yes.

20 Q -- there. Is that what that is? Okay.

21 Was that in that same location?

22 A No. It was in the dining room that is off

23 towards the right.

24 Q I see. And then towards the left upper portion

1 of that exhibit, looks like the -- be some hats; is
2 that correct?

3 A Yeah, there's a hat covering up the smoke
4 detector.

5 Q I see. Now, the wall in this exhibit is bare.
6 During July of 2019, was there something else that was
7 there on that wall?

8 A There was knives hanging -- there was a knife
9 hanging on the wall, and there was a big entertainment
10 center there at one time.

11 Q And what was the entertainment center used for?

12 A Extra screen and computer stuff that Thomas
13 would use for his gaming.

14 Q Did the kids use that stuff, Thomas' --

15 A Sometimes --

16 Q -- entertainment center?

17 A -- he would let -- the kids were allowed to go
18 on to his computer. But the entertainment center
19 pretty much had all his stuff in it.

20 Q Okay. Now, I'm showing you Exhibit 7.

21 What are we looking at there?

22 A We are looking at the door, the screen door to
23 the kids' bedroom area.

24 Q And it looks to be towards the back of the hall

1 there. Would you agree it looks to be like a bedroom?

2 A Yeah, that would be OS's bedroom.

3 Q And where's --

4 A Straight ahead.

5 Q Where's HS's bedroom there?

6 A HS's bedroom is off to the right.

7 Q Exhibit 8, what are we looking at there?

8 A HS's bedroom on the right, and OS's on the
9 left.

10 Q Was that still HS's bedroom and OS's bedroom
11 back in 2018, 2019?

12 A Yes.

13 Q Had you ever switched bedrooms during that time
14 period?

15 A Never.

16 MR. MERRILL: Thank you.

17 BY MR. MERRILL:

18 Q Now, I'm going to take you back to July 14th of
19 2019.

20 A Okay.

21 Q July 20 -- July 14th of 2019.

22 Let me take you back to about 4:00 p.m. or so,
23 4:00 or 5:00 p.m. on that night.

24 What were you doing?

1 A I was just getting off work.

2 Q What shift were you doing?

3 A 9:00 to 5:00.

4 Q Okay. And was that your -- is that your

5 cashier --

6 A Yeah.

7 Q -- position?

8 A -- I was a cashier. It's not my normal time on

9 Sundays, but I was filling in for somebody.

10 Q Had you received a text message that day from

11 the defendant?

12 A Yes.

13 Q Okay. Tell us about how you received that text

14 message.

15 A He sent me a text message saying that I needed

16 to come home because we had something that we needed to

17 talk about. So, to come home as soon as I could.

18 Q So, what did you do when you receive that text

19 message?

20 A I told him that I would be there as soon as I

21 count out and sign my paperwork. I will be home as

22 soon as I can.

23 Q When you received that text message, were you

24 already in the process of checking out or were you --

1 A Yeah, I was --

2 Q -- still working?

3 A I was waiting on -- to sign my papers before I
4 could leave the building.

5 Q Is that a lengthy process or?

6 A It takes about 45 minutes sometimes. It
7 depends on who's counting me out.

8 MR. MERRILL: If I may approach, Your Honor,
9 the clerk? If I could publish, Your Honor?

10 THE COURT: Yup.

11 BY MR. MERRILL:

12 Q Ms. Bernal, I'm showing you what has been
13 marked as State's 17.

14 Do you recognize that?

15 A Yes.

16 Q Okay. What are we specifically looking at
17 here?

18 A A message that Thomas sent me asking me if I
19 would get him smokes. And me responding and him not
20 answering after a little while.

21 Q Okay. Turn the page here.

22 Okay. So, then this one, what are we looking
23 at?

24 A Him saying he couldn't hear his phone, and I

1 said I was going to try my luck because I was going to
2 try \$5 in the machines to see if I can win a little bit
3 more. So, I was in the process -- I was sitting at a
4 machine doing that when I got the text.

5 Q I see. And if you look on that phone there, on
6 the text it has a timestamp and the date.

7 Would you agree that you received that text
8 about 4:51 p.m. on the 14th of July?

9 A Yes.

10 Q And that's about the time you recall receiving
11 a text?

12 A Yes.

13 Q And there at the bottom of that, that very last
14 text message there, could you read that out loud to us:

15 A "K, babe, but hurry home, please. We need to
16 talk. Love you."

17 Q When you received that text message, what did
18 you do?

19 A I didn't really think much of it. I thought
20 maybe the kids were being pains in the butt again, that
21 I needed to talk to them. I didn't think anything
22 really bad about it.

23 Q At that moment you just --

24 A I just figured maybe the kids were acting up or

1 something.

2 Q I see. Did you leave work after you received
3 that text message?

4 A I did.

5 Q Okay. What did -- how did you -- did you stop
6 anywhere on the way home?

7 A No, I came straight -- I went straight home.

8 Q Okay. How far is your home from Dini's?

9 A About seven to ten miles I think.

10 Q So, it probably took you about 10, 15 minutes
11 maybe?

12 A About ten minutes probably.

13 Q So, when you got home, what is the first thing
14 that happens?

15 A I got out of my car, and Thomas was standing at
16 the front door, all agitated and upset. So, I
17 proceeded to grab my stuff and go inside where I walked
18 through the front door, and HS was laying on the couch
19 crying, and OS was sitting and playing video games with
20 his headset on.

21 Q You said Thomas was agitated and upset. I
22 mean, how do you know that?

23 A Just by his demeanor, the way he was standing,
24 the look on his face.

1 Q I see. So, you notice Thomas, you notice OS,
2 your son, you noticed HS?

3 A (Nods head.)

4 Q Okay. Was there anything else that you noticed
5 when you came in?

6 A Not that I remember right now.

7 Q Okay. What happened after that?

8 A Thomas told me we needed to talk, so we into
9 our bedroom to talk. And then I saw that he had his
10 backpack packed. And he told me he had done something
11 that he wasn't sure that could be fixed. And so, he
12 told me that he had been inappropriately touching my
13 daughter in her private parts for a while now.

14 Q Do you recall his specific words that he used?

15 A I don't recall the specific words.

16 Q Did he use the words inappropriately?

17 A Yes.

18 Q Okay. Did you clarify him -- with him what he
19 meant?

20 A Yes, I did. I tried to clarify what he meant
21 by that. I had asked him if he actually penetrated her
22 with his penis. And he said no, he had only stuck his
23 fingers in there and grabbed her.

24 Q So, the defendant told you that he used his

1 fingers on HS?

2 A Yes.

3 Q And you took that to mean -- was there any
4 words in there that -- about HC's vagina?

5 A I don't remember if her vagina was actually --
6 if it was said like that or not. I can't remember.

7 Q Okay. Did you specifically clarify with him?
8 You said the term "penis." Did you specifically
9 clarify with him and say, "Was it with your penis?"

10 A I think I might have said "dick" but -- I said,
11 "Did you stick your dick in her?" And he said, "No,
12 just my fingers." I didn't know I could cuss, sorry.

13 Q So, whatever the terms that you used is what we
14 want you to use. So, if that's the term used.

15 So, after you spoke with him about that, how
16 did the rest of the conversation go? What happened?

17 A Well, we sat in the room, and we talked about
18 it. And I screamed, and he just sat there and was
19 apologizing. And after a while, I told him no, he had
20 leave. So, I made him leave the house.

21 Q Now, initially you said he came into the room
22 and noticed his bags were packed.

23 A Yeah, his backpack was packed already, sitting
24 on the edge of the bed from what I remember.

1 Q Did you ask him about that?

2 A Not really. I don't remember asking him about
3 that. I just remember seeing it packed.

4 Q So, did you tell him to leave after the
5 conversation?

6 A After the conversation, I told him to leave the
7 room, and I asked HS -- just to confirm, I asked her if
8 he had been touching her or doing what he said he just
9 admitted to me. And she said yes. And then after
10 that, I told him he had to leave.

11 Q Now, when he left, did he take the bag with
12 him?

13 A Yes.

14 Q Okay. How did he leave? Did he have his own
15 vehicle?

16 A Yes.

17 Q Did he say anything to you on the way out?

18 A Not that I can remember. I was really mad. I
19 was really mad.

20 Q So, you spoke to HS. Did you speak to anyone
21 else that night? Did you speak to OS?

22 A Later on, yeah. OS was upset because he didn't
23 know what was going on. At that moment he was upset.
24 So, I had to tell him that I had to kick TJ out because

1 he was touching his sister inappropriately.

2 Q Did you get in any details with OS?

3 A No.

4 Q Okay.

5 A No.

6 Q Did you ask HS any details?

7 A I did not ask her any details.

8 Q Did you know -- do you know where the defendant
9 went to after he left your house?

10 A I went to his brother's house.

11 Q Did he send a text message afterwards?

12 A Yes.

13 Q After he left?

14 Again, I'll show you Exhibit 17 here.

15 Do you see that first text message there?

16 Looks like timestamped 7:01 p.m.?

17 A Uh-hum.

18 Q On the 14th?

19 A Uh-hum. Yes.

20 Q Who's that first text message, right after the
21 timestamp, who's that from?

22 A That's from TJ.

23 Q Okay. And can you read that out loud?

24 A "Wanted to let you know I have to go to my

1 dad's in Reno. Love you."

2 Q And then the text message underneath that,
3 who's that one from?

4 A Me.

5 Q And can you read that one out loud?

6 A I said, "You know I should file a report, but
7 I'm stupid. I won't. So," I think about -- "So, think
8 about shit. Call your dad now. Have him call me. I
9 want to talk to him."

10 Q And then the text message right below that, can
11 you read that one as well?

12 A "He said he will call you now."

13 Q And then at the timestamp 7-15-19 at
14 11:40 p.m., who's that one from?

15 A Me.

16 Q And could you read out loud again?

17 A "I don't care if this hurts you at all, but I
18 fucking hate you. It's all on you. Why?"

19 Q So, during the course of that text message did
20 you learn where he said he was going to go?

21 A Yes. He said he was going to go to his dad's
22 in Reno.

23 Q Okay. In that text message, you state "You
24 know I should file a report." Did you end up filing a

1 report?

2 A Yes, I did.

3 Q Okay. And when did you file the report?

4 A I think it was a couple of days after.

5 Q Now, why did you wait to file a report?

6 A I was -- I was mad. I was confused. I wasn't
7 sure exactly what step I was going to do. I didn't
8 know what to do. So, I was giving myself some time to
9 think about what I should do, what are the right steps
10 to take care of this, and I was still dumbfounded that
11 it actually had been happening, and he admitted it.
12 So, I was really confused. It took me a little while
13 to get my head straight.

14 Q After that day, have you had any personal
15 conversations with the defendant at all?

16 A No.

17 MR. MERRILL: Thank you.

18 THE COURT: Okay. Ladies and gentlemen, we'll
19 take the lunch recess now. How's that? Okay?

20 All right. So, let's see, we'll start again at
21 1:15. Okay? So, get here about ten minutes ahead of
22 time. But before you go.

23 During the recess you're about to take, you're
24 admonished that it's your duty not to discuss amongst

1 yourselves or with anyone else any matter having to do
2 with this case.

3 It is your further duty not to form or express
4 any opinion regarding the guilt or innocence of the
5 defendant until the case has been finally submitted to
6 you for decision.

7 You are not to read, view, or listen to any
8 report in the newspaper, radio, television, or on the
9 Internet concerning this case, nor allow anyone to read
10 or comment upon them to you or in your presence. This
11 includes viewing any type of social media relating to
12 this case. You are not to investigate or attempt to
13 obtain any additional information about this case
14 outside the courtroom.

15 Do not Google anything in relation to this
16 case. Do not read any legal text or book regarding any
17 issue raised in court. Should any person attempt to
18 discuss the case with you, or in any manner attempt to
19 influence you with respect to it, you are to advise the
20 bailiff, who will advise the Court, and I will take
21 care of it.

22 Ladies and gentlemen, have a good lunch.

23 (Jury exits.)
24

1 THE COURT: Okay. Anything to bring up before
2 we go into lunch recess?

3 MR. MERRILL: No, Your Honor.

4 MR. KALTER: No, Your Honor.

5 THE COURT: Okay. We're in recess.

6 (Noon recess.)

7

8 THE COURT: Okay. Anything to bring up?

9 MR. KALTER: No, Your Honor.

10 MR. MERRILL: No, Judge.

11 THE COURT: Okay. So, why don't we get
12 Ms. Bernal back up into the witness stand.

13 Ms. Bernal, I just want to remind you that you
14 are under oath still.

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay? Come on around here and have
17 a seat.

18 Okay. You can bring in the jurors.

19 (Jury enters.)

20

21 THE COURT: Parties stipulate to the presence
22 of the jury.

23 MR. MERRILL: Yes, Your Honor.

24 MS. SCHUMANN: Yes, Your Honor.

1 THE COURT: Good. Thank you.

2 Ms. Schumann, go ahead.

3 MS. SCHUMANN: Thank you, Your Honor.

4

5 CROSS-EXAMINATION

6 BY MS. SCHUMANN:

7 Q Good afternoon.

8 A Good afternoon.

9 Q So, I have just a few follow-up questions for
10 you, ma'am?

11 A Okay.

12 Q Now, TJ helped you get your kids back, correct?

13 A Yes.

14 Q In what ways did he help you get your kids
15 back?

16 A He helped me clean my life up and get a job and
17 get out of trouble.

18 Q And what do you mean by clean your life up and
19 get out of trouble?

20 A At one point I was addicted to drugs.

21 MR. MERRILL: Objection, Your Honor.

22 MS. SCHUMANN: I'll move on, Your Honor.

23 BY MS. SCHUMANN:

24 Q What year did you --

1 THE COURT: All right. They jury's not to --
2 is to disregard both question and the answer. Thank
3 you.

4 BY MS. SCHUMANN:

5 Q Now, what year did you get the kids back?

6 A 2015.

7 Q Was it '14 or '15?

8 A '15.

9 Q And where were you living at that time?

10 A In Mason with Thomas.

11 Q And how long did you live in Mason?

12 A At least a couple of years. I am not a hundred
13 percent on the timeline.

14 Q Okay. So, you think maybe one or two years in
15 Mason?

16 A About two years --

17 Q Two years?

18 A -- I would say.

19 Q So, from 2015 to 2017?

20 A No. Before that.

21 Q Oh, okay. Did you know what the years were
22 approximately?

23 A 2012 or '11.

24 Q Okay. So, like 2011 to 2012?

1 A That's when I moved in with him, yes.

2 Q And then you got the kids in 2015?

3 A Yes.

4 Q When you were still in Mason?

5 A Yes.

6 Q Now, how old was HS when you got her back?

7 A She was ten. Nine, ten.

8 Q Okay. You said it was in 2015?

9 A Wait. No, she was -- sorry. She was 12. Her
10 brother was nine. Sorry.

11 Q Okay. So, 2012 you think?

12 A Yes.

13 Q Or I'm sorry. She was 12?

14 A Yes.

15 Q Okay. When did you guys move into the 610
16 Highway 95A East house?

17 A December of 2016 or '17.

18 Q And so, HS was how old?

19 A About 13.

20 Q Okay. When you guys moved in?

21 A I'm trying to get the timelines right. I'm not
22 very good at it. Sorry.

23 Q It's okay. Take your time.

24 A So, let me correct myself. When I got her back

1 she was 11. And then she was 13 when we moved into
2 that house.

3 Q Okay. Now, between you and TJ, who was the
4 primary disciplinarian?

5 A We both were. When I wasn't working, he would
6 take care of them. And when I was at home with them, I
7 would do it.

8 Q So, when he was home with the kids was he
9 allowed to discipline them when he needed to?

10 A He was allowed to put them in time out or tell
11 them that, you know, you need to do your chores and
12 stuff like that. And if they didn't do it, they would
13 get sent to their room.

14 Q Now, did HS always do her chores at home?

15 A No.

16 Q Okay. What chores didn't she do or refused to
17 do?

18 A Dishes and cleaning her room mainly.

19 Q Typical teenage stuff?

20 A Yes.

21 Q Now, was HS having issues at school?

22 A Yes. She was having a little bit of issues.

23 Q What were those issues?

24 A She was having issues with a boy at school.

1 Q Can you tell us about that?

2 A Well, it started the same year. It was a few
3 months before all this happened. She was acting out,
4 and she was caught under the bleachers --

5 MR. MERRILL: Objection.

6 THE COURT: Overruled.

7 MS. SCHUMANN: Okay.

8 THE COURT: Go ahead.

9 BY MS. SCHUMANN:

10 Q So, was she disciplined at school for
11 behavioral issues?

12 A Yes.

13 Q What were her grades like?

14 A A's and B's.

15 Q Now, this boy, did you allow HS to date this
16 boy or did she do it behind your back?

17 A She did it behind my back. I didn't give her
18 permission at first, and I found out later on.

19 Q So, when you found out about the boy, did you
20 tell her to break up with him?

21 A Yes.

22 Q And did she?

23 A She said she did, but I don't think she did.

24 Q Did you or TJ have to force her to break up

1 with him?

2 A I forced her to.

3 Q Okay. How did you do that?

4 A I told her that I didn't want her around him
5 anymore, and if she was, I was going to get a
6 restraining order so he wouldn't be around her.

7 Q Okay. Now, HS wasn't happy about that, right?

8 A No, of course not.

9 Q Now, tell us about this -- the massages that TJ
10 would give. Would he give you massages for any aches
11 and pains?

12 A Yeah, he would do my back sometimes. Not a
13 lot, but every once in a while I'd come home really
14 sore, and he would rub my lower back, yes, and my upper
15 back.

16 Q Okay. And would he rub HS and OS as well?

17 A Yeah, he would.

18 Q Now, this was reported to you by HS on
19 July 14th of 2019, correct?

20 A It was reported to me by TJ.

21 Q On that date?

22 A On that date.

23 Q And you didn't contact law enforcement until
24 two days later, correct?

1 A Correct.

2 Q And you only contacted law enforcement when
3 your friend told you that you might lose your kids if
4 you didn't?

5 A No.

6 Q Why did you --

7 A That's not true.

8 Q Okay. Why did you end up reporting it?

9 A Because it's inappropriate and --

10 Q You waited two days?

11 A I was confused. I didn't know what to do.

12 Q And your message to TJ said you weren't going
13 to report it, correct?

14 A At that moment I wasn't going to. And then I
15 was thinking, and I started thinking more about it. I
16 was confused. I was mad at the time I sent that text.

17 Q And you didn't discuss with HS what happened
18 specifically?

19 A No.

20 Q You didn't tell -- you didn't ask her how long
21 it was going on?

22 A I did ask her how long it was going on, but I
23 didn't go into details.

24 Q Did she tell you it had been going on for a

1 year?

2 A Yes.

3 Q And that's what you reported to

4 Deputy Greenhut, correct?

5 A Correct.

6 Q And you hadn't obtained a protection order
7 against TJ until after the cops told you to get one,

8 correct?

9 A Correct.

10 Q That was after the cops said if you didn't,
11 they'd report it to DCFS?

12 A No. He never told me that.

13 Q They didn't tell you that when they initially
14 arrived on scene?

15 A No.

16 Q Now, when you received the text message, you
17 said that you were trying to trying your luck. That
18 means gambling I'm assuming?

19 A Yes.

20 Q Were you drinking while you were gambling that
21 day?

22 A I had about a half a beer.

23 Q Now, where were you in the house when TJ talked
24 to you about the allegations in July of '19?

1 A We were in the bedroom, our bedroom.

2 Q Okay. How far was HS away from the bedroom?

3 A About five or six feet, maybe ten. She was in
4 the living room behind a closed door.

5 Q And when you're having this conversation with
6 TJ, was HS yelling anything that you could hear?

7 A Not that I could hear.

8 Q And TJ said to you, "Apparently I've been
9 fingering HS?"

10 A He said, "Apparently I've been touching your
11 daughter inappropriately."

12 Q Okay. How long did you fight with TJ in the
13 room before he left the house?

14 A I couldn't tell you the time limit. I was so
15 mad that I don't -- I couldn't even tell you how long
16 it was honestly.

17 Q Okay. Now, going back to January of 2019, was
18 that when HS was told to break up with a boyfriend?

19 A Yeah.

20 Q Now, in January TJ told you that there was a
21 rumor around town that HS -- that he had been molesting
22 HS; is that correct?

23 A Yes.

24 Q What was said exactly?

1 A That -- HS's boyfriend at the time said -- was
2 saying that HS told him that TJ was molesting her, and
3 he was going to call the cops on TJ.

4 Q And TJ talked to you about this rumor?

5 A He said it wasn't true at first. He said it
6 wasn't true, and then he admitted it to me on the 14th,
7 so.

8 Q That was in July though, right?

9 A Yeah.

10 Q So, in January you didn't believe that the
11 rumors were true, correct?

12 A I didn't.

13 Q So, you didn't believe your daughter initially
14 when she reported this, or when you heard about it?

15 A I wasn't sure if she was telling the truth or
16 not. Sometimes kids act out and say things when
17 they're mad.

18 Q Now, did HS tell you that she was being
19 molested by TJ when she was 13?

20 A Yes.

21 Q What did she -- well, what was said?

22 A Well, she said that he'd been doing it for a
23 while, and it's been since 13 into her 14 and almost
24 15th year.

1 Q Okay. But when she was 13 she didn't come to
2 you?

3 A No.

4 Q Okay.

5 A She was scared.

6 Q How many times have you discussed this case
7 with HS?

8 A Not very many. A couple of times, but not
9 anything other than we've already talked about that we
10 can talk about.

11 Q Now, how often were you helping get the kids to
12 the bus stop around this time?

13 A It depended on how late I had come home.

14 Q How many days off did you have on average?

15 A Two days off.

16 Q Were those usually weekdays, weekends?

17 A In the middle of the week.

18 Q Okay. So, on those days did you go out of your
19 way to take them the bus stop?

20 A I tried to make sure I did, yes.

21 Q Now, did HS ever try to talk to you without TJ
22 being around?

23 A There was times that, you know, I would see
24 that she was upset about something, so I would try to

1 talk to her. And we'd go in her room to talk. And --
2 excuse me -- we'd be in the room talking, and then
3 Mr. Bernal would come in and stand by the doorway. And
4 she'd like stop talking to me, and I didn't understand
5 why. And then it continued to happen every time we
6 would try to talk.

7 Q Okay. Why didn't you take her out of the house
8 for a car ride?

9 A I tried.

10 Q What do mean?

11 A I had tried. I took her down the road a few
12 times. Not on that exact day. But I had taken her out
13 and talked to her about stuff.

14 Q Okay.

15 A And she still would not say anything to me.

16 Q Okay. Now, you said there were roommates
17 living in the house, correct?

18 A Yes.

19 Q So, multiple roommates?

20 A No, there was just his friend, Marlene.

21 Q Okay. And what about, was there a male that
22 lived in the house?

23 A There was one temporarily, but he was only
24 there for like a month or so. But that was her

1 boyfriend.

2 Q Okay. Now, is there a bathroom in the back of
3 the house?

4 A No.

5 Q So, these roommates, when they are at your
6 house, they have to travel through the common areas to
7 get to the bathroom?

8 A Yes.

9 MS. SCHUMANN: I have no further questions,
10 Your Honor.

11 THE COURT: Any follow-up, Mr. Merrill?

12 MR. MERRILL: Just very briefly.

13

14 REDIRECT EXAMINATION

15 BY MR. MERRILL:

16 Q So, when you came home on the 14th of July,
17 2019, the defendant and you were in the master bedroom,
18 correct?

19 A Yes.

20 Q And he told you when you said was he was
21 touching HS inappropriately?

22 A Yes.

23 Q Is that correct?

24 A (Nods head.)

1 Q Okay. And then you told me on direct that you
2 clarified that; is that correct?

3 A Uh-hum.

4 Q Okay.

5 A Yes.

6 Q And he clarified that he used his fingers on
7 HS's vagina; is that correct?

8 A Yes.

9 MR. MERRILL: Thank you.

10 THE COURT: Okay. Thank you, Ms. Bernal.
11 Is Ms. Bernal subject to -- wait. Hold on.
12 Subject to recall?

13 MS. SCHUMANN: No, Your Honor.

14 MR. MERRILL: Not by the state.

15 THE COURT: Okay. Please, don't discuss your
16 testimony with anyone Ms. Bernal.

17 THE WITNESS: Yes, sir.

18 THE COURT: You're released from further
19 testimony in this matter at this time.

20 THE WITNESS: Thank you.

21 MR. MERRILL: Your Honor, the State calls
22 Detective Messmann.

23 THE COURT: Please come on up, Detective.

24 Please, raise your right hand, face the clerk

1 and be sworn.

2 (Witness sworn.)

3 THE COURT: Okay. Come on around here, sir,
4 and have a seat right there.

5 Okay. Go ahead, Mr. Merrill.

6
7 MICHAEL MESSMANN,
8 called as a witness herein by the State,
9 having been first duly sworn, was examined
10 and testified as follows:

11

12 DIRECT EXAMINATION

13 BY MR. MERRILL:

14 Q Good afternoon, Detective Messmann.

15 A Good afternoon.

16 Q Please state your full name and spell your last
17 name for the record.

18 A My name is Mike Messmann. My last name is
19 spelled M-E-S-S-M-A-N-N.

20 Q And how are you employed?

21 A I'm a detective with the Lyon County Sheriff's
22 Office.

23 Q And how long have you been a detective for?

24 A Going on four years.

1 Q And how long have you been employed with
2 Lyon County Sheriff's Office?

3 A Just over 12 years.

4 Q And with your current position what are your
5 job duties?

6 A Currently in my position I'm primarily
7 responsible for crimes against persons. So, which
8 essentially involve sexual assault crimes, as well as
9 battery with deadly weapons, attempted murders, and
10 murders or homicides.

11 Q And as part of your job duties, do you handle
12 cases of sexual assaults?

13 A I do.

14 Q And how many of those sorts of cases have you
15 handled through your career as a detective?

16 A I'd say conservatively, approximately 150.

17 Q And at any given time how many approximately
18 are you working on?

19 A At any given time I'm working on roughly seven
20 to eight sexual assaults at any one time.

21 Q Now, if you could tell the jury about your
22 training, first, as a, just a law enforcement officer?

23 A Sure. So, I attended POST, which is
24 essentially for all -- to become a peace officer in the

1 State of Nevada, you have to attend a course of
2 training. So, after I graduated from the POST Academy,
3 I became employed with the sheriff's office where I've
4 had probably approximately over 2,000 plus hours of
5 training in regards to conducting criminal
6 investigations, interview techniques, so on and so
7 forth.

8 Q Now, Detective, have you had any additional
9 training that you need to accomplish?

10 A Yeah. So, once I was assigned into Detectives,
11 I was sent to training for essentially child forensic
12 interviews which was by CornerHouse. Which are a style
13 interview that is used in these types of particular
14 cases. I also was sent to interview and interrogation
15 type trainings, which included -- one of them was from
16 Third Degree Communications, Third Degree. And during
17 that training it involves behavior analysis and
18 deception detection, as well as eliciting the truth.

19 I've had other trainings which also included
20 detection, deception detection, as well as a techniques
21 which we referred to as Defense Barrier Removal. And
22 so, both of these trainings that I'm referring to
23 employ a rapport based approach when you do interviews.

24 Q Thank you. Have you -- did you have any

1 training with the John E. Reid Associates nine step
2 method?

3 A I've -- no, I've never had training from that.

4 Q Sir, I want to start in general.

5 How would you -- cases typically that involve
6 allegations of sexual abuse, how do those typically
7 come to your attention at first?

8 A So, there's a couple of different ways.
9 Sometimes patrol deputies will call us while they're on
10 scene, and they will ask us advice while they're on
11 scene because they want to make sure that they're
12 collecting all of the evidence that might be there, as
13 well as not do anything to jeopardize the
14 investigation. So, that is one way I can become
15 loosely aware of a case.

16 But typically for me, the case -- once the case
17 or the -- that deputy completes their report, it's
18 forwarded through a system to my supervisor, which
19 ultimately assign it to one of the detectives. Once
20 that is assigned to me, then I review that report for
21 its content, and then determine the course of
22 investigation from that point.

23 Q Okay. Now, once you receive a report or
24 referral from your supervisor, how do you typically

1 handle a case in general?

2 A So, I'll review the case, the information sent
3 from the patrol deputy for essentially what was
4 reported to them for what the allegation would be, and
5 then the appropriateness of what I would need to do
6 next. Like, in a case such as this, the next step
7 would be to schedule a child forensic interview which
8 involves contacting a parent or guardian.

9 Q Now, I want to take you to July 19th of 2019.
10 Did you become aware of a case involving a
11 Thomas Bernal?

12 A I was, yes.

13 Q And how did you become aware of that case?

14 A That's the day the -- my supervisor had
15 assigned me this particular case. And upon receiving
16 it, I reviewed what the patrol deputy, the information
17 he gathered from his time on the scene.

18 Q And just based on what the deputy's report was,
19 what did you learn to be the situation?

20 A From the deputy's report I learned that it had
21 been reported to him that a HS had reported that she
22 had been, I can't remember exact term he used in his
23 report, but essentially molested and/or sexually
24 assaulted by her stepfather, whom he identified in his

1 report as Thomas Bernal. And that -- subsequent to
2 that, that was report -- that information was reported
3 to her mother, Patricia, and I believe it was Patricia
4 who contacted the sheriff's office for a report. And
5 during Patricia's discussion with the deputy, it was
6 reported that Thomas had also admitted to some sort of
7 act to Patricia as well.

8 Q So, when you received that report, what was the
9 first thing you did in this case?

10 A After I reviewed the report, I contacted
11 Patricia by telephone and scheduled a child forensic
12 interview of HS.

13 Q And was that on August 8th of 2019?

14 A Yes.

15 Q Now, you say -- keep saying forensic interview.
16 What is a child forensic interview?

17 A So, a child forensic interview, it's a
18 technique in which that an interview is conducted. And
19 in this instance, we use the Washoe County Child
20 Advocate Center, and that interview is conducted by a
21 person that's not law enforcement. The person that
22 conducts that interview is specifically that, a child
23 forensic interviewer. It provides a neutral place for
24 victim's of these types of crimes to be able to go and

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd.,
P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing
document to be delivered to all parties to this action by



E-flex delivery of the Nevada Supreme Court

Stephen Rye
Lyon County District Attorney

DATED this 23rd day of September, 2021.



KARLA K. BUTKO, Esq.