

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS JASON BERNAL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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APPEAL FROM JUDGMENT OF
THE HONORABLE JOHN P. SCHLEGELMILCH

THIRD JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 4

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1 report or just discuss whatever it is that they need to
2 discuss.

3 So, it's just essentially a method in which an
4 interview is conducted. So, when I say "child forensic
5 interview," it's really just a certain method of the
6 way the interview will be conducted.

7 Q Is there a reason why you yourself don't
8 conduct those interviews?

9 A So, we found several years ago that best
10 practices, and especially in regards to investigating
11 these types of crimes, was to use a basically a
12 multi-agency approach. So, honestly when I first came
13 into detective, this was the type of interview we would
14 conduct as detectives. But, shortly thereafter, what
15 we learned was using an agency like the Child Advocacy
16 Center removes us from doing that interview.

17 And like I said, it provides a neutral place
18 for these victims to go, and so, they're not law
19 enforcement, and it provides me an opportunity to
20 observe what is being said. As well as the structure
21 of these interviews can also include district
22 attorneys, social workers, and those types of people to
23 become involved in this basically what's occurring.
24 And so, multiple agencies can reach out for assistance,

1 such as counseling services and those types of things
2 that might be need to be offered to victims and their
3 families.

4 Q Have you sent other children to the
5 Washoe Child Advocacy Center?

6 A I'm sorry?

7 Q Have you sent other children?

8 A Oh, yes. I basically conduct all of my
9 investigations involving children in the same manner
10 that I've described.

11 Q Now, did you set up that child forensic
12 interview to take place on September 4th of 2019?

13 A I did.

14 Q Okay. Now, there was a little bit of time
15 between when you contacted Patricia to the actual
16 interview. Is there a specific reason for that?

17 A So, we are considered an outside agency to the
18 Advocacy Center in Washoe County. So, they -- their
19 primary focus is for the agencies that are right there
20 in Washoe County, the Washoe County Sheriff's Office,
21 Reno Police Department, and Sparks Police Department.
22 So, because of that's their primary focus, we are only
23 able to schedule interviews on Wednesday. So,
24 depending how busy things are, it can take several

1 weeks to get these interviews scheduled.

2 So, I don't remember specifically, but I would
3 surmise that between my conversating (sic) with
4 Patricia and the actual time of the interview was due
5 to scheduling with the Advocacy Center.

6 Q Are -- at times are the interviews quicker to
7 the disclosure?

8 A They can be, and it's all about availability to
9 that. So, the Advocacy Center blocks off Wednesdays in
10 particular. So, but they serve a numerous amount of
11 agencies. So, not just Lyon County Sheriff's Office is
12 blocked out for Wednesdays, but all of the, you know,
13 probably -- last I heard, roughly 140 roughly agencies
14 surrounding the Reno Sparks area, which includes
15 northern Nevada and northern California, this agency
16 can serve.

17 And so, because of that, Wednesdays is that
18 day, so depending on how busy they are, we can get
19 scheduled out several weeks.

20 Q So, September 4th, 2019, HS has an interview,
21 correct?

22 A Correct.

23 Q Okay. Are you present for that interview?

24 A I was.

1 Q Were you in the same room?

2 A I was not.

3 Q As far as your investigation goes, was there
4 anything in that interview that pointed you one -- in
5 one direction or the other for your investigation?

6 A Yeah. So, while I was observing that
7 interview, I observed HS disclose that -- she described
8 at least one occasion very specifically which
9 involved --

10 MS. SCHUMANN: Objection, Your Honor, hearsay.

11 MR. MERRILL: Your Honor, it's not for the
12 truth of the matter asserted. It goes to how his
13 investigation proceeded and what he did next.

14 THE COURT: Well, we heard the testimony from
15 HS. So, we don't need to hear it from
16 Detective Messmann. So, he can say there was a
17 disclosure and this is what he did as a result of the
18 disclosure without going into hearsay statements.

19 BY MR. MERRILL:

20 Q Detective, without specifically stating what HS
21 said, what did you do next in your investigation?

22 A So, based on the content of her disclosure, I
23 chose to further the investigation along by essentially
24 conducting subsequent interviews and obtaining

1 information to help support and/or refute statements
2 that she had made during that interview.

3 Q Did you ultimately interview Thomas Bernal?

4 A Yes. Ultimately, yes.

5 Q Okay. And what led you to decision to
6 interview him?

7 A Based on other information I had obtained prior
8 to my interview with Mr. Bernal, I did determine that
9 it would be relevant in this case to interview him to
10 provide him an opportunity to explain to me what had
11 been reported to the sheriff's office.

12 Q Again, I wanted to talk about in general. In
13 general when you bring someone down there to interview,
14 how does that process begin?

15 A Typically it begins by a phone call from me to
16 the person. I identify myself, and I let them know
17 that I would like to speak with them, or I wish to
18 speak with then. Upon their agreement, we usually come
19 to a, you know, an agreeable date and time between us,
20 and a location between us. In this instance,
21 Mr. Bernal agreed to meet me at the Silver Springs
22 substation, which is a substation that the Detectives
23 Bureau Office is located at.

24 Q It was at the agreed upon date and time?

1 A Yes. Actually, that date was suggested by
2 Mr. Bernal, at which I agreed with him to meet with him
3 at that time.

4 Q During that conversation -- I mean how long was
5 that conversation?

6 A Telephone conversation, maybe five minutes. It
7 was literally just to discuss when we would both be
8 available to meet.

9 Q And then on October 21st, did Mr. Bernal come
10 down to the substation?

11 A He did, yes.

12 Q Okay. Were you able to find out how he arrived
13 at the substation?

14 A Yes. I had asked him at the beginning of the
15 interview how he was able to travel to the substation.
16 And he advised me that his father had provided him a
17 ride, and in fact his father was waiting for him in the
18 parking lot in his father's vehicle.

19 Q And do you recall what time of day that was?

20 A It was in the morning. I believe it was
21 shortly before 10:00 a.m.

22 Q So, let's talk about just the layout of the
23 Silver Springs substation.

24 A Sure.

1 Q When someone first walks into the building,
2 what are they going to encounter?

3 A So, when you first walk into the building
4 there's a lobby area. And so, our substation is
5 divided. It's a shared building between us and Social
6 Services. So, on one side of this lobby area is Social
7 Services secretary, and on the other side of the lobby
8 is the Sheriff's Office secretary. And so, and there's
9 a small window for each secretary in which the public
10 can speak with whatever side they wish to speak with.

11 And then there is a door which is locked if
12 you're in that lobby area which would gain you access
13 into the Social Service's side of the building. Once
14 you go through that door into the Social Service's side
15 of the building, they have numerous offices on that
16 side of the building, as well as public restrooms are
17 on that side of the building.

18 You have to walk down an approximately 20 to 30
19 foot hallway. You'll pass like a break room, things
20 like that. You'll go past another door, which requires
21 a key and/or -- key coded lock to enter on to the
22 sheriff's side of the building.

23 On that side of the building, you'll find the
24 Detective Major Crimes Bureau Office, our Narcotics

1 Bureau Office, patrol, sergeant has an office there, my
2 detective sergeant office, my lieutenant detective
3 office, as well as an interview room and the patrol
4 squad room is all on that side of the building.

5 Q Now, the interview room, describe that, please?

6 A So, the interview room is accessed by
7 essentially walking kind of past the patrol area, the
8 patrol squad room. It's a -- I couldn't even
9 approximate how large the room is. It's a smaller
10 room. It's just a door. There's no windows in it.
11 And there's a table and anywhere between three -- two
12 to four chairs at any given time in the room. We have
13 an easel in the room for -- that at time sometimes we
14 use it for people who need to draw different things.
15 And it's I believe linoleum floor. So, pretty plain.

16 Q And where are the bathrooms in relation to the
17 interview room?

18 A So, the bathrooms are, like I was describing
19 earlier, are on the Social Services side of the
20 building. So, from that interview room you have to
21 basically go back through the door that can -- the
22 locked door that I explained. But when you're on that
23 side of our building, that -- it's not locked on that
24 side.

1 It's just a push through. You can just push
2 through it. Similar to like these -- the doors in the
3 courtroom here, you just push through, and you would
4 walk down the hall, you'd make a left, and the
5 bathrooms are immediately to your left there.

6 Q And then let's talk about exit doors inside.
7 How close is an exit door to the interview room?

8 A The interview room is located right next to an
9 exit door. That exit door would take you into a
10 secured parking area which is controlled parking area
11 for the sheriff's office. Or, again, you would walk
12 straight through the other door that I just previously
13 described twice now, and that door is probably 30 to
14 50 feet approximately away from where the interview
15 room was located?

16 Q All right. Jumping back to the defendant, he
17 showed up at the substation, correct?

18 A Yes.

19 Q And if you recall, do you recall how he was
20 dressed?

21 A He was dressed blue jeans, I believe a white
22 T-shirt and like a black and yellow colored, like a
23 winter type jacket, a heavier jacket.

24 Q And how were you dressed?

1 A I was dressed -- I was wearing my slacks, a
2 dress shirt, and a tie.

3 Q And tell me about the -- how the beginning of
4 the interview went.

5 A At the beginning of the interview, I explained
6 to Mr. Bernal that essentially he was free to leave. I
7 had asked him if he was in -- had shown up to the
8 interview room or to the interview voluntarily, which
9 he advised me he had. I explained the door was closed
10 merely for our privacy. Because like I've explained,
11 this particular room, it's adjacent right next to a
12 patrol squad room.

13 So, unfortunately, not because I like it this
14 way but that's the way it was designed, but because
15 when we're in there, patrol doesn't realize we're in
16 there, and they can come in and out of that area at any
17 time. So, I close the door for our privacy. And I
18 explained that to Mr. Bernal, the door was closed
19 merely for our privacy, and he was free to leave
20 essentially at any time. And that the only thing that
21 would occur if he was to get up and leave was that I
22 would follow him just to ensure he's not wandering
23 around our building.

24 Q Was there anyone else with you in the interview

1 room?

2 A Yes, another detective.

3 Q And what's his name?

4 A Marty Dues.

5 Q So, at the beginning of interview, do you just
6 go over some kind of preliminary questions?

7 A I did, yes. I just asked some questions.
8 Basically, some personal history questions of
9 Mr. Bernal.

10 Q And what kind of personal history questions do
11 you ask?

12 A It's basically his name, height, weight, his
13 address, current employer, if he's taking any
14 medications, if he's had anything to eat or drink
15 recently, if he's under the supervision of a parole and
16 probation officer, if he has a social worker, and if
17 he's had any prior contacts with law enforcement, what
18 were those contacts and if he had had any prior
19 criminal history, arrests, things of that nature.

20 Q That's just standard typically questions?

21 A Standard, yes.

22 Q Okay.

23 MR. MERRILL: May I approach your clerk, Your
24 Honor?

1 THE COURT: Uh-hum.

2 MS. SCHUMANN: Your Honor, could we approach
3 the bench?

4 THE COURT: Yes.

5 (Discussion at bench among Court and counsel.)

6 BY MR. MERRILL:

7 Q So, Detective, the interview that you had with
8 the defendant, was that recorded?

9 A It was, yes.

10 Q Okay. And do you know how it -- how those
11 things record in that interview room?

12 A So, in the Silver Springs substation there's
13 the interview room has two cameras in it. One of the
14 cameras has a microphone in it, which would record the
15 audio. In addition to the audio/video recording that
16 the interview room has, I always use an audio recorder,
17 a digital audio recorder, and so, I also had a digital
18 audio recorder on the table in the room. So, that
19 would have been the two methods that interview was
20 recorded.

21 Q As soon as we get it going here, I'm going to
22 show you a part of the video.

23 A Okay.

24 Q I'll have you identify who was there in the

1 video.

2 A Uh-hum.

3 Q And we will attempt to authenticate it.

4 Detective, do you have that there on your
5 screen?

6 A I do.

7 Q Okay. Thank you.

8 I'm going to play for you part of Exhibit 21.

9 THE COURT: All right. So, are you publishing
10 this to everyone at this point, Mr. Merrill?

11 MR. MERRILL: No, I do not want to publish to
12 everyone.

13 THE COURT: All right. So --

14 MR. MERRILL: Just to the --

15 THE COURT: All right. So, just put it to the
16 witness screen, Madame Clerk, so it can be
17 authenticated first. Turn off the juror screens and
18 the big screen. So, there should be like a private
19 way.

20 THE CLERK: It's off.

21 THE COURT: It's off on your screen?

22 THE CLERK: Yes.

23 THE COURT: Okay. Very good.

24 All right. So, now you can authenticate. Now,

1 you turned it -- no, it's on. You're good. You're
2 good. All right.

3 BY MR. MERRILL:

4 Q Detective, you do see my screen, correct?

5 A I do.

6 Q Okay. So, I'm going to play a portion for you
7 here.

8 (Video played.)

9 BY MR. MERRILL:

10 Q All right. Detective, I'll stop that 8:55 and
11 54 seconds.

12 What are you looking at there on the screen?

13 A I'm looking at a view into our interview room.
14 Inside the room is Mr. Bernal, myself, and
15 Detective Dues is standing next to the door, and the
16 moment that this video is paused, Detective Dues is
17 closing the door.

18 Q And is this a accurate portion of the interview
19 that you had with the defendant?

20 A It is, yes.

21 Q And have you reviewed this portion?

22 A I have, yes.

23 MR. MERRILL: State moves for admission of
24 Exhibit 21, Your Honor.

1 THE COURT: This is 21?

2 MR. MERRILL: Yes.

3 THE COURT: Anything?

4 MS. SCHUMANN: Your Honor, we do have a
5 standing objection on. I'll just put that on the
6 record.

7 THE COURT: Okay. It's admitted.

8 (Whereupon, State's Exhibit 21 for
9 identification, was received in
evidence.)

10 MS. SCHUMANN: Thank you, Your Honor.

11 MR. MERRILL: Your Honor, I move to publish.

12 THE COURT: All right. So, now you can turn on
13 everything.

14 BY MR. MERRILL:

15 Q So, Detective, I'm going to stop it here real
16 quick just at ten seconds.

17 Just for the jury, what are we looking at in
18 this portion of the video?

19 A This is the interview room. The table is
20 pushed up against the back wall. And then there's two
21 chairs in each corner, and then the two chairs kind of
22 positioned in front of the table. Between the table
23 and the door are chairs that Detective Dues and I had
24 intended to sit at as my paperwork and coffee cup are

1 in front of the one chair, and then Detective Dues' pad
2 and paper is in front of the other chair.

3 Q Thank you. I'm going to go ahead and play the
4 video again.

5 (Video playing.)

6 BY MR. MERRILL:

7 Q Detective, I'm going to stop there at minute
8 13. If you could just identify first, beginning with
9 the person on the far right of the screen?

10 A The far right is Detective Marty Dues. He's
11 wearing the black colored vest and blue colored dress
12 shirt. The next person over from that located in
13 between those -- the two subjects is myself. I'm
14 wearing the dark gray dress shirt and black colored
15 pants. And then the blue jeans and the dark -- the
16 black jacket is Mr. Bernal.

17 Q And, Detective, I'm going to go ahead and start
18 playing at a minute 13.

19 (Video playing.)

20 BY MR. MERRILL:

21 Q So, I'll stop it there at minute two and
22 54 seconds.

23 During this portion of the interview, again,
24 are you just trying to gain some background into

1 Mr. Bernal?

2 A Absolutely, yes. I'm just -- quite honestly,
3 like I did advised him, it is just so I have all of his
4 information correct. Because I am writing a report, so
5 I just like to make sure everything is correct as I
6 have it as I'm talking to him.

7 Q And we watched approximately two minutes of
8 this portion of the interview. How would you describe
9 the tone of the interview?

10 A It's friendly, casual. On the way into the
11 interview room, he had -- he was -- he had advised me
12 of knowing a employee of the sheriff's office. And so,
13 as we're entering into the room, I make a comment about
14 that I know the person he's referring to, but I don't
15 know the family members that he -- that Mr. Bernal had
16 referenced as we were walking back. So, it's a casual,
17 friendly conversation.

18 Q Okay. During the entire course of the
19 interview, do you ever yell?

20 A No.

21 Q Do you ever cuss?

22 A I did cuss, but not in anger or derogatory
23 terms but in the manner of just speaking.

24 Conversationally adults sometimes will through

1 conversation. So, there were curse words used, but
2 never in like a derogatory manner.

3 Q Not in an angry manner?

4 A No.

5 Q Okay. Was it ever directed to the defendant?

6 A No, it was not.

7 Q Did you ever throw things?

8 A No, I did not.

9 Q Now, in the video you closed the door. And I
10 don't recall if it was you or Detective Dues closed the
11 door. But either way, the door is closed. Is that
12 door locked?

13 A It is not locked, no.

14 Q During the course of the interview, did
15 Mr. Bernal ask to use the restroom?

16 A Through the course of this entire interview,
17 he -- we took three breaks. He requested to use the
18 restroom on two occasions, and the first occasion is
19 actually a suggestion by Detective Dues and myself that
20 we take a break. So, it was a total of three bathroom
21 breaks throughout this interview.

22 Q Did you ever refuse him to use the bathroom?

23 A I did not.

24 Q Okay. So, take me through the interview from

1 the start to the -- to the conclusion of the interview.
2 What's going on?

3 A So, at beginning of the interview I do just
4 gather information, and it is for accuracy of my
5 records. It is also a way to -- for us to observe and
6 establish how in this case Mr. Bernal communicates.
7 Because everyone has different communication styles.
8 So, it's just for us to be able to understand his
9 communication methods. And so, through the course of
10 this interview, like I referenced earlier, based on my
11 training, we conduct these interviews in a rapport
12 building manner.

13 So, throughout the course of the interview, I'm
14 trying to continually establish and build rapport
15 Mr. Bernal, as well as Detective Dues doing the same.
16 And at the conclusion of -- or towards the end of the
17 interview, Mr. Bernal had made some admissions to me.
18 After which, he actually took another bathroom break,
19 and then subsequently after that bathroom break and
20 some further end of interview questions, I advised him
21 he was under arrest.

22 Q So, was there a point in the interview where I
23 guess everything came to a head or to a point where the
24 defendant disclosed to you?

1 A So, yes, in this interview there was some
2 things that he'd said throughout the course of the
3 interview which became a theme throughout the
4 interview. And so, there was things that he had said
5 that just didn't make sense. And so, when he told us
6 the story, it didn't make sense because he was leaving
7 portions of what had actually happened out. And then
8 once he had made that disclosure and had explained what
9 that information that he was withholding, it all made
10 sense, and essentially, when he included that
11 information and included the disclosure of what had
12 happened with HS, and then not too much long after that
13 is when the interview is concluded.

14 Q So, I mean, you were aware of what HS said
15 happened, correct?

16 A Yes.

17 Q At that point? Okay.

18 A Yes.

19 Q Did you ask him anything about massages?

20 A I did ask him about massages, yes.

21 Q And did he provide a response?

22 A Yes. He admitted to providing HS with massages
23 on at least a weekly basis and occasionally more.

24 Q Were there any other things that he discussed

1 regarding HS?

2 A Regarding HS, during the course of this
3 interview, he admitted to having a dream.

4 MS. SCHUMANN: Objection. Your Honor, can we
5 approach.

6 THE COURT: Come on up.

7 (Discussion at bench among Court and counsel.)

8

9 THE COURT: Okay. Ladies and gentlemen, it's
10 one of those times we're going to have to take a little
11 break to determine some evidentiary issues. Okay?

12 So, during the break that we're about -- during
13 the recess we're about to take, you're admonished that
14 it is your duty not to discuss amongst yourselves or
15 with anyone else any matter having to do with this
16 case. It is your further duty not to form or express
17 any opinion regarding the guilt or innocence of the
18 defendant until the case has been finally submitted to
19 you for decision.

20 You are not to read, view, or listen to any
21 report in the newspaper, radio, television, or the
22 Internet concerning this case, nor allow anyone to read
23 or comment upon them to you or in your presence. This
24 includes viewing any type of social media relating to

1 this case. You are not to investigate or attempt to
2 obtain any additional information about this case
3 outside the courtroom.

4 Do not visit the scene or attempt any
5 investigation on your own. Do not Google anything
6 relating to the case. Do not read any legal text or
7 book regarding any issue raised in court. Should any
8 person attempt to discuss the case with you or in any
9 manner attempt to influence you with respect to it, you
10 are to advise the bailiff, who will in turn advise the
11 Court.

12 It looks like we've been into it for about an
13 hour anyway. So, it's probably time to stretch your
14 legs regardless. So, what I'm going to do is I'm going
15 to actually give you about 20 minutes this break. Go
16 ahead and, you know, if you want to go outside and have
17 a brief walk or something, and then we'll get going
18 back here. In about 20 minutes we'll have you back in
19 here. All right? Thank you.

20 (Jury exits.)

21
22 THE COURT: All right. So -- all right. Let
23 me hear the testimony first.

24 Detective, what's the dream?

1 THE WITNESS: He admits to dreaming about HS.
2 He explains that she is an adult during his dream, but
3 he admits to having sex with HS in his dream, and that
4 she essentially is pregnant with his child or is having
5 his child, something to that effect.

6 THE COURT: Okay. All right.

7 So, what's the objection?

8 MS. SCHUMANN: The objection is, Your Honor,
9 it's not relevant. It's highly prejudicial. More
10 prejudicial than probative. And frankly, a pretrial
11 motion should have been filed on this if the State
12 intended to introduce it.

13 THE COURT: Well, I mean, the pretrial motion
14 was to introduce the entire interview. But okay --

15 MS. SCHUMANN: Your Honor, it's --

16 THE COURT: -- so, all right. So, how's it
17 relevant?

18 MR. MERRILL: Your Honor, super relevant.
19 We're talking about him sexually abusing HS. If he's
20 having dreams about sexually abusing HS or having sex
21 with HS while she's living in his house and she's a
22 teenage girl and he's a grown man, yeah. That's -- is
23 it prejudicial? Of course it's prejudicial.

24 THE COURT: So, basically you're saying it's

1 evidence of intent and motive? That's --

2 MR. MERRILL: Seems to be.

3 THE COURT: All right. Okay.

4 MS. SCHUMANN: Your Honor, it'd be one thing if
5 he's introducing it through an expert, you know, and
6 analyzing it. But just through a lay person, it's not
7 relevant. Let's put it on the record.

8 THE COURT: Okay. Well, all right. So, the
9 Court does find that his attraction to HS is relevant
10 to him sexually abusing her, and it's admissible.
11 Okay?

12 The Court also determines that its probative
13 value outweighs its prejudicial effect. This is not a
14 prior bad act. This is his own statement, and it's a
15 relevant statement made in relation to his intent in
16 relation to this case, specifically his attraction to
17 HS. Sure it's prejudicial, but it's not unfairly
18 prejudicial. It's admitted.

19 Okay. So --

20 MR. KALTER: Can we just make a slight more
21 record, Your Honor?

22 THE COURT: Yes, you can, Mr. Kalter. Go
23 ahead.

24 MR. KALTER: I think our argument is that it's

1 a dream, and which people can't control their dreams.
2 If he said to the officer, yes, I fantasize about her,
3 I think about, I've thought about having her baby -- or
4 I've thought about having sex with her in my mind or in
5 a fantasy, that's very different than hey, I had this
6 dream.

7 And so, I think our argument before the Court
8 is, it's without some context of a psychiatric expert
9 or something to tie the connection, it's a dream. He
10 did not say yeah, I have these fantasies of her.
11 People can't control their dreams. So, I think that is
12 our prejudicial. It does not in and of itself without
13 some type of expert context go to motive or a
14 infatuation.

15 If he said I fantasize about her, that's one
16 thing, but it's a dream. And I have -- everyone has
17 lots of dreams they wish they didn't have. So, I think
18 it's dangerous. It could be potentially misleading to
19 the jury because it's not a fantasy, it's a dream.

20 THE COURT: No. All right.

21 So, but the context is that he dreams of HS
22 having his child and having sex with her in the course
23 of his sexually assaulting her, according to her
24 testimony, and it's admissible.

1 So, you made your record. It's fair enough.
2 But the Court's going to allow it. Okay?

3 So, we'll get back going here at 25 minutes
4 till 3:00. Okay?

5 (Courts in recess.)

6
7 THE COURT: All right. So, anything to bring
8 to the Court before we get started?

9 MS. SCHUMANN: Your Honor, I guess we should
10 put on the record the sidebar before the last break.
11 Just wanted to note a standing objection for the video
12 interview of the defendant so I'm not standing up and
13 constantly objecting every time the State wants to
14 admit one of his exhibits. And I believe the State is
15 going to be seeking to admit Exhibit 20, which is
16 another portion of the audio/video interview of the
17 defendant. Again, we have the standing objection that
18 we'll put on the record.

19 THE COURT: Okay. And that's the actual --

20 MR. MERRILL: That's the actual confession or
21 admissions, Your Honor.

22 THE COURT: Okay. So --

23 MS. SCHUMANN: And Your Honor, that did include
24 the hymen portion, which we already addressed with the

1 Court.

2 THE COURT: Okay. So, all right.

3 So, Mr. Merrill, that's been previously marked.

4 So, I'm assuming that you wish to admit it into
5 evidence, right?

6 MR. MERRILL: Exhibit 20?

7 THE COURT: Yes.

8 MR. MERRILL: Yes.

9 THE COURT: All right. So, the Court has
10 previously ruled that it would be admissible. So, it's
11 admitted. Okay? This way we don't have to go through
12 that all.

13 (Whereupon State's Exhibit 20 was admitted into
14 evidence.)

15 THE COURT: And your objection is noted for the
16 record.

17 MS. SCHUMANN: Thank you, Your Honor.

18 THE COURT: Let the record reflect the
19 defendant's continuing objection to the interview.

20 MS. SCHUMANN: Thank you, Your Honor.

21 THE COURT: Okay. All right.

22 So, anything else?

23 MS. SCHUMANN: No, Your Honor.

24 MR. MERRILL: No.

1 THE COURT: Okay. All right. Very good.
2 Bring in the jury.

3 (Jury enters.)
4

5 THE COURT: Counsel stipulate to the presence
6 the jurors?

7 MR. MERRILL: Yes, Your Honor.

8 MS. SCHUMANN: Yes, Your Honor.

9 THE COURT: Okay. Continue, Mr. Merrill.

10 MR. MERRILL: Thank you.

11 BY MR. MERRILL:

12 Q Detective Messmann, getting back to the
13 interview of the defendant.

14 A Yes.

15 Q We were previously discussing a few items that
16 led up to a point in the interview. Do you recall
17 that?

18 A I do.

19 Q Okay. You previously discussed about some
20 massages. You remember that?

21 A Yes.

22 Q Okay. Now, were there other things during the
23 course of that interview that, I guess, kind of came it
24 a point, were there other things -- well, let me

1 rephrase that. Strike that.

2 Were there other things the defendant told you
3 in relation to HS?

4 A Yes. He told me that at a certain point he had
5 a dream, or dreams, about HS. In these dreams she was
6 an adult, and that he'd had -- he dreamed of having sex
7 with HS, and that she had become pregnant with his
8 child.

9 Q At some point during the course of the
10 interview, did he provide you with what you would say
11 was an admission?

12 A Yes, he did.

13 Q What was specifically said?

14 A He explained that while he was massaging HS's
15 leg, that he'd had some what he called CBD cream on his
16 hands, and that his hands had slipped, and he had
17 enter -- his words "entered her". When I asked him
18 clarifying questions in regards to what parts of his
19 body he was referring to, he placed his right hand on
20 the table and lifted his right index finger, indicating
21 to me that it was his right index finger that had
22 entered her. And when I asked a clarifying question
23 about it being HS's vagina, he responded by saying, "It
24 was an accident."

1 Q Did he -- did you ask follow-up questions about
2 where this happened?

3 A I did. I asked him where it'd had happened.
4 He explained that he recalled it happening in her
5 bedroom.

6 Q Did he indicate that he knew what she was
7 wearing?

8 A He recalled that she was wearing some pajama
9 pants which he described as exceptionally oversized,
10 and that he would push up the legs of the pant -- of
11 the pajama pant up in order for him to gain access to
12 her skin and the portion of her leg that he was
13 advising he was massaging.

14 Q Were you able to clarify whether or not he
15 actually used one finger to penetrate HS's vagina?

16 A When I asked him about what parts of his body
17 had entered HS in his words, again, he held up his
18 right index finger so -- indicating to me that it was
19 just his one finger.

20 Q Did he tell you when this happened?

21 A He estimated it was sometime in January or
22 February of 2019.

23 Q Did he tell you what house?

24 A The -- yeah, the house that the family was

1 living at at that time, which was here in Yerington,
2 Nevada.

3 Q Is that the 610 U.S. Highway 95A?

4 A Yes.

5 Q Did he describe for you at all his body
6 position when this happened?

7 A I believe he described HS as laying on the bed,
8 and that he was standing essentially next to the bed.
9 And that he advised that when -- at the -- at the
10 moment that this, what his words were "accident
11 happened," there was a piece of paper on the floor,
12 which had caused him to slip, and during that slip is
13 when his finger had entered her vagina.

14 Q Was there any discussion in particular about
15 HS's anatomy?

16 A Yes. As he began to explain to me this
17 incident, he explained a -- that at some point, HS
18 didn't have a hymen due to a, what he described as an
19 accident involving a fence when she was at a much
20 younger age.

21 Q And the person who made those statements,
22 Thomas Bernal, to you, is he in the courtroom today?

23 A Yes, he is.

24 Q And can you identify him by an article of

1 clothing?

2 A Yes. He's sitting to my right. He's wearing a
3 dark colored suit jacket, light colored purpleish
4 colored dress shirt, and a blue colored tie.

5 Q Now, what you just described, what the
6 defendant told you, was that portion of the video
7 record?

8 A Yes, it was.

9 MR. MERRILL: And if I may play, just like last
10 time, play a small portion of the video?

11 THE COURT: It's been previously admitted.
12 Just play it.

13 MR. MERRILL: Okay.

14 THE COURT: You can publish it.

15 MR. MERRILL: I can publish?

16 THE COURT: Yeah.

17 (Video played.)

18 BY MR. MERRILL:

19 Q So, Detective, you just watched the portion of
20 the interview there. That portion, that's what you
21 were describing before we watched the video; is that
22 correct?

23 A Yes, that was the section.

24 Q Okay. Now, when he said those things that we

1 just watched there, what did you -- I guess, how did
2 your investigation change, if it did, at that point?

3 A The only part of my investigation that changed
4 at this point is my decision to arrest him. I had -- I
5 had no intention of arresting him prior to the
6 admission. And then once he provided that admission,
7 at that point I decided that he would be under arrest
8 at some point later in the interview.

9 Q Okay. Did the interview continue after this
10 point for a period of time?

11 A It did. I don't recall how much longer it
12 continues. I know we take a bathroom break after this.
13 And then I asked him some more questions, like
14 interview type questions. And then it's at the end of
15 those questions that I inform him he's under arrest.

16 Q So, after these admissions are made the
17 defendant takes a bathroom break?

18 A Yes.

19 Q Okay. Do you follow him to the bathroom?

20 A No. So, I only go to the -- that locked door
21 that he can't come back through, I walk with him to
22 that point, and then I stay at that door because he
23 can't -- once he's finished with the bathroom, he can't
24 come back. So, I wait for him there, and he continues

1 the rest of the way to the bathroom by himself, out of
2 my sight. And then when he's finished, he comes back
3 to where I am located so I can let him back through our
4 secured door.

5 Q You don't follow him into the bathroom?

6 A No, none of the times that we took a restroom
7 break did I follow him.

8 Q Okay. Prior to the submission parts that we
9 didn't watch, did you ever throw stuff or yell at the
10 defendant in any way?

11 A No, I did not. The duration of the interview
12 is pretty much like what is depicted here in this
13 video.

14 Q So, you ask a series of interview questions,
15 correct?

16 A Yes.

17 Q Okay. And you did that here with Mr. Bernal?

18 A I did, yes.

19 Q And what types of questions are you asking him?

20 A There are questions to get his essentially
21 opinion of the interview itself. Some barriers that
22 maybe he had to overcome in to telling us the truth,
23 how he was treated, what his opinion about myself,
24 and/or Detective Dues was. It's question along those

1 lines.

2 Q And what did he say in regards to those
3 questions?

4 A I recall that generally he liked Detective Dues
5 more than he liked me. Not that he disliked me. He
6 just mentioned how I appeared to be I think judging
7 him, I think is what his comment was. But ultimately,
8 he said that he felt like he was treated fairly, I
9 think is the term he used, during the course of the
10 interview.

11 Q Now, Detective, you watched a couple of videos
12 now and you describe some of the clothes that you were
13 wearing initially when you came in to the interview?

14 A Yes.

15 Q Did -- during this point of the interview, did
16 you have any sort of firearm on you?

17 A I did not. So, what I will explain is that in
18 a prior hearing, I was asked that question, and I
19 didn't have a chance to review this. And so, at that
20 time I had explained to err on the side of caution.
21 Because what happens is, I'll do these interviews both
22 ways. Sometimes I'm armed and sometimes I'm not. And
23 at that time I couldn't recall if I was armed or not.

24 So, at that previous time I had indicated I

1 was. Subsequent to that hearing, I had been able to
2 review this, and I can see that I'm clearly not armed.
3 I'm not wearing my sidearm nor handcuffs or my badge at
4 that time. I am simply just wearing my dress clothes
5 as you can see me here.

6 Q Was that clarified by watch -- re-watching the
7 video?

8 A It was, yes.

9 MR. MERRILL: Pass the witness, Your Honor.

10 THE COURT: Okay.

11 Ms. Schumann?

12
13 CROSS-EXAMINATION

14 BY MS. SCHUMANN:

15 Q Good afternoon.

16 A Good afternoon.

17 Q Now, Detective, if you could just answer yes or
18 no to the following questions?

19 You received a report in this case on
20 August 8th of 2019, correct?

21 A Yes.

22 Q And that was from Deputy Greenhut?

23 A Yes.

24 Q And the forensic interview wasn't completed on

1 HS until September 4th of 2019, correct?

2 A Correct.

3 Q And you didn't interview Mr. Bernal in this
4 case until November 5th of 2019, right?

5 A No, that's not correct.

6 Q When was he interviewed?

7 A October 21st of 2019.

8 Q What was that day again, sir?

9 A October 21st of 2019.

10 Q The transcript date says November 5th of '19.
11 So, is that date wrong?

12 A I'm not sure what transcript you're referring
13 to?

14 MS. SCHUMANN: Your Honor, if I can approach?

15 BY MS. SCHUMANN:

16 Q Is this a transcript of your interview with
17 Mr. Bernal?

18 A I'll have to take your word for it. I've never
19 seen this.

20 Q You can skin through -- skim through it if you
21 want to.

22 THE COURT: Did he prepare that?

23 MS. SCHUMANN: No, Your Honor.

24 THE WITNESS: I -- yeah, I mean it appears to

1 be, yes.

2 BY MS. SCHUMANN:

3 Q Okay. And the date on there is November 5th,
4 correct?

5 A Yes.

6 Q Okay. So, you said the interview happened
7 October 21st of 2019?

8 A To my recollection, yes.

9 Q And that was nearly three months after it was
10 initially reported, correct?

11 A Correct.

12 Q Now, heading into the interview room you
13 actually placed TJ in the furthest corner from the
14 door, right?

15 A I asked that he sit there, yes.

16 Q Okay. So, you directed him to that location?

17 A Yeah.

18 Q And it's fair to say that that chair was the
19 furthest from the exit, correct?

20 A Sure. Yes.

21 Q And then you and Detective Dues were sitting
22 between Mr. Bernal and the exit?

23 A Relatively. I wouldn't say -- I wouldn't
24 describe it as that, but yes.

1 Q He'd have to pass by you, correct, to get to
2 the exit?

3 A Sure. He had an easy path in which he could
4 walk by, yes. We weren't -- we weren't blocking his
5 exit.

6 Q That was the only exit to the room, correct?

7 A That is the only exit to the room.

8 Q And during the interview no Miranda rights were
9 read to Mr. Bernal, correct?

10 A Correct. He was there voluntarily.

11 Q And you didn't tell him he could have an
12 attorney present then, right?

13 A As I said, he was there voluntarily.

14 Q Just yes or no. Did you tell him an attorney
15 could be present?

16 A No.

17 Q Did you tell him that anything he said could be
18 used against him?

19 A No.

20 Q Now, you've only told Mr. Bernal that he was
21 free to leave at the beginning of the interview,
22 correct?

23 A Yes.

24 Q And for the first four hours of the interview

1 TJ denied that anything sexual had happened between and
2 HS?

3 A I can't answer that accurately. I don't
4 know -- I don't -- I did not mark the times at which he
5 made admissions or not.

6 Q Is that an approximate?

7 A Again, I don't know. So, you're asking me to
8 make a guess. I don't know.

9 Q It was towards the end of the interview, right?

10 A Towards the end, yes.

11 Q Okay. Okay.

12 Now, this telephone call that you had to get
13 Mr. Bernal to the station, that was conveniently not
14 recorded, correct?

15 A That was -- I'm sorry, can you ask that
16 question again?

17 Q That wasn't recorded, correct?

18 A What --

19 Q Your phone call to Mr. Bernal to get him to
20 come to the substation?

21 A No, as none of them are.

22 Q Okay. And you didn't give him a choice about
23 the location of the interrogation?

24 A I don't recall if I did or not.

1 Q You told him it would be at the substation,
2 correct?

3 A Again --

4 Q Just yes or no.

5 A Well, I can't answer that yes or no.

6 Q You don't know?

7 A No. Because when I contact people, there are
8 times that I will give them an option of meeting me in
9 Fernley or Silver Springs. So, I don't know if that
10 was my discussion with Mr. Bernal. So, I would have
11 asked that he meet me at one of the two substations,
12 whether it be Fernley and/or Silver Springs. But,
13 again, I didn't dictate the exact location. I would
14 have asked that he meet me at a substation of the
15 sheriff's office to do the interview, yes.

16 Q Okay. So, he didn't say -- he didn't have a
17 say in the location?

18 A Yes.

19 Q And during that phone call you didn't tell TJ
20 that he didn't have to talk with you, correct?

21 A No. I asked him to speak with me though.

22 Q Okay. Now, during the interview, didn't you
23 tell Mr. Bernal that this was his chance to tell his
24 side of the story?

1 A I don't know if I -- I don't know if I used
2 those terms or not.

3 Q Did you imply that?

4 A Well, it would be -- it would be implied in the
5 fact that he's there to speak to me about a certain
6 incident, yes.

7 Q Okay. Now, TJ told you during the interview
8 that he would rub CBD oil onto HS's back and legs,
9 correct?

10 A Yes.

11 Q And he told you that sometimes Patty would also
12 rub CBD oil on HS?

13 A Yes. But he did advise me that he was the
14 primary person who did this for HS.

15 Q Okay. But Patty also did, right?

16 A On a lesser occasion, yes.

17 Q And you said during the interview, after
18 Mr. Bernal continued to deny anything happened, you
19 said, "Why would HS make these accusations up if it
20 didn't happen?" Do you remember saying that?

21 A I might have said something to that effect,
22 yes.

23 Q And you repeated several times throughout the
24 interview that you don't think TJ's a bad guy, but you

1 think something happened and he needed to talk about
2 it?

3 A Yes, that's correct.

4 Q You also told TJ that once he tells you, a
5 weight would be lifted off of him?

6 A Yes, that's correct.

7 Q I'm going to read you a portion of the
8 interview. Let me know if it's correct or not.

9 This is you speaking. "So, the thing of it is,
10 honestly, TJ, I don't think you're a bad guy. I really
11 don't. You know, we've been sitting here talking and,
12 you know, the stuff that you told me and the -- you
13 know, the things that you've been through and stuff
14 like that and working on your marriage, I don't think
15 you're a bad guy. But I do think that something
16 happened. And I think this is one of these situations
17 where, you know, maybe this is weighing who you?

18 I mean, it's pretty clear something's weighing
19 on you. And so, sometimes, you know, when you have
20 something weighing on you, and just for you to be able
21 to come out with it, that weight's lifted. And so,
22 that's kind of where we're at right now, you know what
23 I mean? Because quite honestly I get that 13,
24 14-year-old kid says I may say things as, to especially

1 stepparents. But something happened for HS to say
2 these things." Do you remember saying that?

3 A Yes.

4 Q And you suggested that maybe TJ accidentally
5 slipped a finger into HS's vagina while he was rubbing
6 her legs?

7 A No. I never suggested that.

8 Q You never suggested that, not once?

9 A I think the suggestion of an accident may have
10 occurred, but I would have never suggested with
11 specificity.

12 Q Okay. Well, let's go back and review the
13 transcript.

14 This is you speaking. "Is it possible that
15 during one of these massages that, you know,
16 unintentionally your hand was or fingers were a little
17 higher up on her leg than you thought?" Did you say
18 that?

19 A Sure, I said that.

20 Q And then you said, "It's not possible that you
21 were up high enough to, like I said, even accidentally
22 brush against her vagina?" Did you say that?

23 A Yes. That wasn't entering though.

24 Q You also said, "Is it possible that, again

1 accidentally, your hand is rubbing her vagina, anything
2 like that?" Did you say that?

3 A I did say that.

4 Q "Could you have accidentally touched her vagina?"
5 Did you say that?

6 A Yeah.

7 Q "Could you have -- it could have been a slip?"
8 Did you say that?

9 A Yes.

10 Q I think there might be one more. Let me go
11 back.

12 And then about two hours into the interview, as
13 TJ's denied that anything sexual has happened, you
14 asked him to take a CVSA, which is a computer voice
15 stress analysis test, correct?

16 A Yes.

17 Q What voice stress test apparatus did you use?

18 A I can't answer that because I didn't administer
19 that exam.

20 Q You don't know what your department usually
21 uses?

22 A I do know what we use. But I -- if you're
23 asking me that particular device, there's a couple of
24 different versions, but we use the computer voice

1 stress analysis from NITV, which is National Institute
2 of Truth Verification. But specifically the exact
3 device, I can't answer it.

4 Q Is that what was used during Mr. Bernal's
5 interview?

6 A Yes, one of the CVSA machines was used during
7 that interview, yes.

8 Q Okay. Now, you guys rearranged the room to
9 administer the CVSA, correct?

10 A I did not. I was not in the room during the
11 rearrangement of furniture.

12 Q But you know what the room looked like after
13 the interview, right?

14 A I do. Yes, when I --

15 Q After the CVSA?

16 A When I came back into the room after the CVSA,
17 yes --

18 Q Okay.

19 A -- I'm aware of what the room looked like.

20 MS. SCHUMANN: For the record, this is
21 Plaintiff's Exhibit 19. Oh, I guess it's already on
22 the screen.

23 BY MR. MERRILL:

24 Q Can you see that screen in front of you?

1 THE COURT: All right. So, now, it's on the
2 screen.

3 MS. SCHUMANN: Okay. Thank you.

4 THE WITNESS: Yes.

5 BY MS. SCHUMANN:

6 Q Now, Detective, so, you rearranged the room for
7 the CVSA, correct?

8 A I did not rearrange the room, no. I wasn't in
9 there during that time.

10 Q Okay. But Detective Dues rearranged the room?

11 A He had -- you'd have to ask him. But yes, at
12 some point after I was out of the room, the furniture
13 was rearranged.

14 Q Okay. And looking at your screen, where is
15 Mr. Bernal?

16 A He --

17 Q Can you circle it on the screen?

18 A Can I circle it?

19 Q Yes.

20 A Do I just use my finger?

21 THE COURT: Just use your finger.

22 MS. SCHUMANN: It's not going to work.

23 BY MS. SCHUMANN:

24 Q Is he the furthest from the exit?

1 A He's the one in the black colored jacket with
2 the yellow shoulders.

3 Q So, the furthest from the exit?

4 A Yes.

5 Q And now, he's got a table and two detectives
6 between him and the exit, correct?

7 A Correct.

8 Q Now, TJ was reluctant to take the CVSA,
9 correct?

10 A No. That's not my recollection.

11 Q So, you and Detective Dues asked TJ if he's
12 willing to take the CVSA. TJ's answer was, "Dude, my
13 heart has not stopped beating out of my chest since I
14 woke up this morning. And as you guys can see, my
15 voice has been going up and down this whole time
16 because this is a stressful situation." Do you
17 remember TJ saying that?

18 A Yes.

19 Q That's reluctance, correct?

20 A That's him explaining how he felt.

21 Q Right. Reluctant to take the test?

22 A I took it as him explaining to me how he felt
23 at that moment.

24 Q And TJ told you he lost 30 pounds because of

1 these accusations, right, due to the stress?

2 A Early in the interview, yeah, I remember him
3 telling me that.

4 Q And then you and Deputy Dues tell TJ that if
5 he's innocent, he should take the test?

6 A Not in -- not in those terms. But yes, there
7 was a discussion in which that is discussed.

8 Q And you said if he's guilty, he shouldn't take
9 the test?

10 A Yeah, that's correct. If he had anything to do
11 with it, we encourage him to not take the test.

12 Q And then you guys told TJ that the CVSA results
13 would go into his criminal mystery. Do you remember
14 saying that?

15 A I don't. I don't remember saying that, no.

16 Q Do you remember Detective Dues saying that?

17 A I don't remember him advising him it'd go in
18 his criminal -- like, specifically his criminal
19 history, I don't recall that.

20 Q This is a quotation from the interview. "We
21 don't want to because this shows up as he was a suspect
22 in this, and if we don't come down to the conclusion
23 off yeah, and he took a CVSA and he passed -- so, if
24 you ever had like a job history or somebody searching

1 into your background and you're trying to better
2 yourself, then if they say, oh, well, what happened
3 here and they read it, and they's like oh, yeah, but he
4 took a CVSA and he passed."

5 So, and then TJ says, "Do the background checks
6 go into that much detail? The answer, "Sure,
7 absolutely." Do you remember saying that? Or hearing
8 Detective Dues say that?

9 A Yeah, I remember hearing him saying that.

10 Q You accused TJ of leaving stuff out of his
11 history, correct?

12 A Yes, I did.

13 Q You said that his story didn't make sense,
14 correct?

15 A Correct.

16 Q So, you were determined to keep him there until
17 you thought the story made sense?

18 A No, that's not correct.

19 Q Why didn't you just end the interview when TJ
20 initially denied the allegation?

21 A That's just not my training and experience on
22 how these interviews work. I mean, unfortunately,
23 there's a lot of people that when they talk to us, they
24 aren't forthcoming with information initially. So, the

1 interview continued as long as Mr. Bernal wanted to be
2 in there. Like I said, he was in there voluntarily, so
3 we just kept speaking.

4 Q So, the interview wouldn't end until he told
5 you what you wanted him to say?

6 A That's not correct.

7 Q Did you tell TJ that if he told you what
8 happened, the charges might not be as bad as he
9 thought?

10 A I explained to him that there's many factors
11 when it goes into consideration of charges. And
12 because he disclosed to me that prior to coming in to
13 the interview, he had looked up what different criminal
14 charges were and what those penalties were, and so, I
15 had explained to him that I wasn't sure exactly what he
16 looked up. But through the course of investigations
17 there was a lot of factors between me doing the
18 investigation and the District Attorney's Office review
19 of the case and ultimately what charges were brought
20 forth.

21 Q Did you say, "But whatever did happen, let's
22 talk about it, and whatever happened might not amount
23 to the charges that whatever it is that you looked up.
24 You see what I'm saying? There's a whole bunch

1 different things that can happen here, and it might not
2 be even, like, as bad as what you're thinking it is,"?
3 Did you say that?

4 A I did say that because I didn't know what he
5 was going to say.

6 Q And then just yes or no. Did you tell TJ it
7 would be better him to confess because it would be
8 easier for him down the road?

9 A I probably said something to that effect, but
10 that's probably out of context. But, yes.

11 Q Another quote from the interview.

12 "Judges are humans too. So, they -- when they
13 read reports and stuff like that, and the district
14 attorneys and stuff like that, when they read reports
15 and they see that you came in and you owned it and you
16 owned what happened and were just honest and was like
17 yeah, this is what happened, they appreciate that.
18 They do.

19 And so, everyone appreciates the fact that you
20 come in and you're man enough to be honest about these
21 things and you just own what happened. But nobody
22 likes being lied to, not even the district attorneys.
23 And so, if they go along and basically just feel you're
24 a liar, well, just like you said with HS, it upsets

1 you. It upsets people because they're human, and so,
2 then things become worse. And so, this is what I'm
3 saying.

4 "This is the road we're at. The road, even
5 though difficult, ultimately is the easier road for
6 you. Or this road, where, you know, like, it's
7 difficult for you to just have a conversation with me
8 now, down the road will become a lot more difficult."
9 Did you say that?

10 A Yes, I said those things.

11 Q Okay. Now, discussing these dreams that you
12 testified about earlier, TJ only admitted to having one
13 dream about HS, correct?

14 A That's -- yes. The one dream he described to
15 me, yes.

16 Q And he told you that in the dream he had a baby
17 with a woman who he didn't recognize?

18 A What he explained to me was that though the
19 woman, I guess, it -- I don't remember exactly how he
20 phrased it, but essentially how he explained it was
21 he -- in the dream he knew it was HS. That's how he
22 explained it.

23 Q Okay. But he said it was a woman he didn't
24 recognize, and the only reason he knew it was HS was

1 because he called her Bug?

2 A Okay.

3 Q Is that accurate?

4 A That sound accurate, yes.

5 Q So, TJ didn't say that he fantasizes about HS,
6 correct?

7 A I don't recall him saying that. He described
8 his dream.

9 Q Okay. Now, this admission that you were
10 talking about, you questioned TJ about the details of
11 that, correct?

12 A Yes.

13 Q And TJ didn't know whether HS was wearing
14 underwear or not?

15 A That's what he said, yes.

16 Q No SART exam was conducted in this case, right?

17 A That's correct.

18 Q Now, TJ actually asked for a smoke break
19 mid-interview, but it was denied. Did you remember
20 that?

21 A I don't. Because I wasn't in the interview
22 room at that time.

23 Q Okay. That was Detective Dues?

24 A Yes, I was -- like I said, I was not in the

1 interview room.

2 Q Okay. And then these bathroom breaks, TJ asked
3 you to use the bathroom, correct?

4 A Yes.

5 Q Approximately it sounds like three times?

6 A Well, the first time Detective Dues and I
7 suggested the break. And then the other two times I've
8 described, TJ, or Mr. Bernal, had asked for the break.
9 He asked to use the restroom. And like immediately we
10 agreed, and he was walking out of the room within
11 seconds of those request.

12 Q Okay. Now, you describe -- so, the exit, you
13 said if you exit out that interrogation room and you go
14 right, you said there's another door that goes to a
15 secured parking lot?

16 A Oh, I'm sorry. If I said right, I misspoke.
17 It -- from this -- from the view, if you exit out the
18 interview room, you'd have to go left. You'd almost
19 make a U turn, a left and then that take you directly
20 out into our parking lot.

21 Q Okay. And then every time TJ had to use the
22 bathroom, you had to let him out of that locked door,
23 wait for him there, and then once TJ was done going to
24 the bathroom, then you would let him back in the door?

1 A That's not correct. From the side of the door
2 that we're on, he would just push through the door.
3 That's not locked from our side. I waited at that door
4 at -- of the locked side why he went to the bathroom so
5 he could -- when he came back, he could get access into
6 our side of the building. Because that -- the door
7 that I'm describing separates our side of the building,
8 the Sheriff's Office side of the building, from Social
9 Service's side of the building.

10 Q Because the door is locked?

11 A That door is locked, where I waited for him at
12 the back -- front. And while he's using the
13 bathroom --

14 Q Yes.

15 A -- that door is locked, yes.

16 Q And you were waiting for him every time he used
17 the bathroom?

18 A Yeah, so he could come back if he -- if he
19 chose to, yes.

20 MS. SCHUMANN: No further questions, Your
21 Honor.

22 THE COURT: Okay. Anything else, Mr. Merrill?

23 MR. MERRILL: Your Honor, if we could approach
24 real quick?

1 THE COURT: Okay.

2 (Discussion at bench among Court and counsel.)

3

4 THE COURT: Ladies and gentlemen, another
5 evidentiary thing, and then by the time you get back in
6 here, we'll probably be able to finish out for the day.
7 Okay?

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

16 You are not to read, view, or listen to any
17 report in the newspaper, radio, television, or the
18 Internet concerning this case, nor allow anyone to read
19 or comment upon them to you or in your presence. This
20 includes viewing any type of social media relating to
21 the case.

22 You are not to investigate or attempt to obtain
23 any additional information about this case outside the
24 courtroom. Do not visit the scene or attempt any

1 investigation on your own. Do not go on the Internet
2 and look anything up in relation to this matter. Do
3 not read any legal text or book regarding any issue
4 raised in court.

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

10 Take about 15 minutes, and then we'll get
11 going.

12 (Jury exits.)

13
14 THE COURT: All right. You can take your break
15 too --

16 THE WITNESS: Okay.

17 THE COURT: -- Detective. All right. So, just
18 make sure you make it back here.

19 THE WITNESS: In 15 minutes?

20 THE COURT: Yeah.

21 THE WITNESS: Okay.

22 THE COURT: All right? At least. Get here
23 five minutes early.

24 THE WITNESS: Okay.

1 THE COURT: All right. Okay. So, all right.

2 This is -- and this is the problem with even
3 mentioning the CVSA. All right?

4 So, Mr. Merrill -- well, first of all in
5 relation to the bench conference, Mr. Merrill
6 approached the Court and requested that the Court allow
7 him to question on what the CVA is -- CVSA is, and what
8 they did, and what the outcome was. So, of course,
9 that was objected to by Ms. Schumann.

10 So, make your record, Mr. Merrill.

11 MR. MERRILL: Your Honor, that is correct.

12 That was what the bench conference was about. We are
13 asking to now be able to discuss the CVSA, what it is
14 and what it does, what happened, what the results were.

15 The witness was directly attacked about he
16 wasn't -- he did not provide the defendant with a smoke
17 break. That was during the CVSA. There's been several
18 questions about what a C -- about a CVSA. The juror's
19 are going to inquire and wonder about what is a CVSA,
20 how is that administered, what the whole process is
21 entirely.

22 There's also mention about the table moved
23 during the interview here and when that took place in
24 relations, again, to the CVSA. The CVSA was talked

1 about extensively, and the witness' credibility was
2 attacked based on that. So, I think I get an
3 opportunity to at least discuss what it is, how it was
4 administered, and to ultimately discuss the results of
5 it.

6 THE COURT: Ms. Schumann?

7 MS. SCHUMANN: Your Honor, we would just put on
8 the record, we didn't get into the results or the
9 procedure or anything like that with the CVSA. We
10 didn't talk about its reliability. Only that the test
11 was administered.

12 Further, Your Honor, his credibility on the
13 CVSA hasn't been -- we didn't bring that up. He denied
14 that he administered the CVSA, and he denied TJ a smoke
15 break. So, I believe the State might be able to get it
16 in through a different witness. But as far as
17 attacking credibility, we didn't do that with the CVSA.

18 THE COURT: Okay. So, I'm not going to allow
19 it, Mr. Merrill.

20 So, the Court does not feel that the questions
21 that were asked in relation to CVSA, it indicated there
22 was truth verification, but there was no direct
23 questioning in relation to the test itself to being
24 deceptive or nondeceptive or the "coercive nature" of

1 the test in relation to his admission.

2 That all being the case, which was -- I was --
3 that was my main concern in relation to even mentioning
4 it, was the questioning in relation to the coercive
5 nature potentially of it in relation to his admission.
6 Okay?

7 So, but be careful, Ms. Schumann, because I'm
8 not going to allow you to argue that they coerced him
9 into a confession as a result of using the CVSA. And
10 if you do it, then they can put on Dues and do
11 everything that he wants.

12 MS. SCHUMANN: Understood, Your Honor.

13 MR. KALTER: But in that -- if I understood
14 your ruling because we discussed this, it completely
15 opens the door except for Dues or an officer saying
16 this is equivalent to Mr. Bernal lying?

17 THE COURT: Right. Yeah, I mean, it would
18 still be limited to that. I mean, of course, he can
19 say that the test showed that he was --

20 MR. KALTER: Deceptive.

21 THE COURT: -- as a result of the test. But he
22 can't testify that he was in fact or not in fact
23 telling the truth or lying.

24 MR. KALTER: Thank you.

1 THE COURT: Yes. Okay? So, that's the --
2 that's the dividing line.

3 MR. KALTER: Oh.

4 THE COURT: Okay? He can say what the results
5 of the test were. But at this point, you know?

6 MR. MERRILL: So, you're saying at this point
7 that hasn't happened, right?

8 THE COURT: That hasn't.

9 MR. MERRILL: The door hasn't opened up. Okay.

10 THE COURT: The door hasn't opened up just by
11 mentioning of the fact that he took a test. Okay? So,
12 because the jury heard the admission after the test.
13 So, and at this point the Court still believes its more
14 prejudicial than probative, so.

15 But like I said, be very careful. Now, I don't
16 know what their expert's going to say. But if the
17 expert comes in and he does testify that that was used
18 as a coercive technique or something like that, then
19 you can put on Dues in relation to it.

20 MR. KALTER: The Court's been very clear on
21 what --

22 THE COURT: Right. Yeah, I just want to make
23 it very clear. But I don't think she crossed that line
24 yet. Okay?

1 MR. KALTER: Thank you.

2 THE COURT: All right. So, you guys got about
3 seven minutes.

4 (Recess.)

5
6 THE COURT: All right. So, okay.

7 So, where are we, Mr. Merrill, in relation to
8 your case?

9 MR. MERRILL: So, we will finish with Messmann
10 here, hopefully, in a few minutes. I will put
11 Marty Dues on.

12 THE COURT: For what purpose?

13 MR. MERRILL: For what purpose?

14 THE COURT: Yeah.

15 MR. MERRILL: Just talk about generally what he
16 did inside the room, talk about a bathroom break.
17 Basically that's it.

18 THE COURT: I mean, it's up to you, but...

19 MR. MERRILL: No, I understand. I mean,
20 frankly I'd rather him be introduced from me rather
21 than -- I'd rather him be introduced from me, you know?
22 Because I'm sure the defense is going to call him, so.

23 So, I have those two. I have Melissa Piasecki
24 and Jennifer McCann.

1 THE COURT: All right. So, what's McCann's
2 testimony going to be?

3 MR. MERRILL: McCann's testimony is going to be
4 that this is what a normal child forensic interview
5 looks like, this is the interview process, this is the
6 cornerstone -- CornerHouse protocol, this is what it
7 is. Dr. O'Donohue's going to attack the cornerstone
8 protocol. His whole testimony is about the child
9 forensic interview. And so, I'm going at least put
10 her --

11 THE COURT: All right. Okay.

12 Well, you can do whatever you want. So, that's
13 going to -- how long -- do you have anybody available
14 today?

15 MR. MERRILL: I have Dues available right now.
16 I have Melissa Piasecki, and I have Jennifer McCann.

17 THE COURT: Oh, they're all here?

18 MR. MERRILL: They're all here.

19 THE COURT: Okay.

20 MR. MERRILL: So, I do have a, I guess,
21 question for the Court. Or rather a concern.

22 During the examination of Detective Messmann
23 here, there was a question about table being moved.

24 THE COURT: Uh-hum.

1 MR. MERRILL: Detective Dues is going to get in
2 here, and if there's that same sort of question, I've
3 completely informed him to not talk about CVSA's or
4 anything else.

5 THE COURT: Okay. Now, what he can say is that
6 to conduct the test, they reset the room.

7 MR. MERRILL: Okay.

8 THE COURT: I mean, that's procedural. I'll
9 let you do that.

10 MR. MERRILL: Okay. I'm not going anywhere
11 near that. I'm just saying --

12 THE COURT: I'm just saying. Yeah, I mean, to,
13 you know, to conduct some of the tests, we rearrange
14 the room to make it more conducive for the testing.

15 MR. MERRILL: I understand.

16 THE COURT: That's fine. But that's as far as
17 you go.

18 MR. MERRILL: Right.

19 THE COURT: Okay. All right.

20 Is there any objection to that, Ms. Schumann?

21 MS. SCHUMANN: No, Your Honor. Is the State
22 going to be attempting to introduce more audio/video of
23 the interview of Mr. Bernal?

24 MR. MERRILL: Yeah, we're going to introduce

1 number 23.

2 MS. SCHUMANN: Okay. So, we just want to --

3 THE COURT: What's 23?

4 MR. MERRILL: 23 is a, basically a bathroom
5 break where the defendant asked to get up and leave.
6 That will be through Dues.

7 MS. SCHUMANN: Okay.

8 THE COURT: All right. So, I'm assuming you're
9 going to offer it then?

10 MR. MERRILL: Yes.

11 MS. SCHUMANN: We'll make the same --

12 THE COURT: Same objection?

13 MS. SCHUMANN: Yes, Your Honor.

14 THE COURT: It's admitted. All right?

15 (Whereupon, State's Exhibit 23 was admitted
16 into evidence.)

17 THE COURT: Okay. So, he doesn't have to do
18 the authentication.

19 MR. MERRILL: Perfect.

20 THE COURT: The interview has already been
21 authenticated.

22 MR. MERRILL: Perfect. Can I just publish it
23 then?

24 THE COURT: You can just --

1 MR. MERRILL: Great.

2 THE COURT: -- put it right up. All right?

3 Because it's already been authenticated. The Court has
4 already ruled it admissible. If it's in, it's in.

5 It's evidence. Okay?

6 MR. MERRILL: Great. Thank you.

7 THE COURT: All right. Anything else?

8 MS. SCHUMANN: No, Your Honor.

9 MR. MERRILL: No.

10 THE COURT: Okay. Please bring in the jurors.

11 (Jury enters.)

12

13 THE COURT: Do the parties stipulate to the
14 presence of the jurors?

15 MR. MERRILL: Yes, Your Honor.

16 MS. SCHUMANN: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 So, please, go ahead and proceed, Mr. Merrill.

19 MR. MERRILL: Thank you.

20

21 REDIRECT EXAMINATION

22 BY MR. MERRILL:

23 Q Detective Messmann, just a few follow-up
24 questions for you.

1 Going back to the bathroom breaks, you
2 indicated you would walk out to a certain area where
3 there was a locked door?

4 A Yes.

5 Q Okay. Can you explain that a little -- a
6 little further?

7 A Sure. So, the Sheriff's Office side of the
8 building is kind of wide open, and the offices,
9 including the interview room, are all kind of on the
10 perimeter of this wide open space. And the wide open
11 space is used by patrol as their squad room. So, from
12 that interview room, you'd walk across this wide open
13 space through a door that, on our side from the
14 direction that I'm describing you're approaching it
15 from, is not locked. You just push through the door.

16 I walked with Mr. Bernal through -- from the
17 interview room through that open space, pushed through
18 the door, and then I stood right on the other side of
19 that door. Because once that door is locked and it
20 closes, if you're now on the Social Service's side of
21 the building, it is locked on that side. So, I stood
22 right at that door. He continued down the hallway,
23 which is approximately 30 feet or more, and then he
24 would have made a left and another left where the

1 bathrooms were located.

2 When he exited the bathrooms, he would have
3 turned right. If he would have continued straight
4 ahead of him approximately another 15 feet, that would
5 have been the exit to the front door that he first came
6 into the building in. That door from that side is also
7 not locked. You just simply turn the knob and walk
8 through, and then you're now onto the public side of
9 that lobby and then out the building.

10 So, when he came out of the bathroom, he made a
11 right and then another right, walked down that hall
12 approximately like three feet where I was waiting for
13 him at the lock -- now the locked door. I unlocked the
14 door. I think honestly there's probably one or two of
15 the occasions that I actually didn't let the door close
16 all the way. There's a small trash can that's right
17 there that I think I slid the trash can to prevent the
18 door from closing all the way.

19 And then once he came back to where I was
20 waiting for him, I opened the door, and then we walked
21 back through onto the Sheriff's Office side of the
22 building, back through that open space, and then back
23 into the interview room.

24 Q Was he out of your sight at any point during

1 that time?

2 A Yes, the -- essentially, once we're on the
3 Social Service's side of the building, once he makes
4 that left-hand turn after working down that hallway to
5 go in the bathroom, he's completely out of my sight.
6 For the entire duration that he's in the bathroom, he's
7 out of my sight. He doesn't come back into my sight
8 until he's basically exited the bathroom and makes
9 those -- that right-hand turn and steps into that area
10 where he would then have to make another right-hand
11 turn to walk down to the hall back to me. It would be
12 at that point that he's back basically in my sight at
13 that point.

14 Q Thank you. Now, the phone call that you had
15 with the defendant, you say that originally on direct
16 it lasted about five minutes?

17 A It's pure approximation.

18 Q Okay.

19 A I would say not more than five minutes.

20 Q Did you ever force him to come down?

21 A No, I did not.

22 Q Did you do ever make a demand for him to come
23 meet with you?

24 A I did not. I simply asked him if he would be

1 willing to meet with me.

2 Q Now, you met with him at the Silver Springs
3 substation, correct?

4 A I did.

5 Q Okay. But you also indicated on cross that
6 sometimes you meet at a different substation?

7 A Yeah. So, depending on where people live,
8 because Lyon County is a large county, it's over
9 2,000 square miles, so I do provide that option. At
10 the time that I contacted Mr. Bernal, I was aware that
11 he was staying up in Reno. So, even though I don't
12 specifically remember the offer, it wouldn't be unusual
13 for me to offer possibly meeting at the Fernley
14 substation, acknowledging that that would be a closer
15 location to his current residence at that time.

16 I honestly, that is something, again, over the
17 course of time, I don't know if I offered it
18 specifically to Mr. Bernal, but it would be a habit of
19 mine to do that. So, that'd be one of the two places
20 that I would offered to meet him.

21 Q Okay. Was that a suggestion or a demand for
22 him to meet you there at --

23 A No, it simply a question if he was willing to
24 meet me. When he agreed, I would have given him the

1 location of where to meet me at.

2 Q Now, to begin the interview, you indicated that
3 you told him that he was free to leave?

4 A At the very beginning?

5 Q At the very beginning.

6 A Yes. At the very beginning I did.

7 Q And did he have any comments in regards to that
8 statement from you?

9 A Essentially that he understood what I had
10 explained to him, what I had stated to him.

11 MR. MERRILL: Nothing further. Thank you.

12 THE COURT: Okay. Thank you, Detective.

13 Is he subject to recall?

14 MR. MERRILL: Not by the State.

15 MS. SCHUMANN: No, Your Honor.

16 THE COURT: Okay. You're excused from further
17 testimony in this matter, Detective. Thank you.

18 Next witness.

19 MR. MERRILL: Detective Marty Dues.

20 Detective, come on formed, raise your right
21 hand, and be sworn by the clerk, please.

22 (Witness sworn.)

23 THE COURT: Okay. Please, come on over here in
24 that seat.

1 Your witness, Mr. Merrill.

2

3 MARTY DUES,

4 called as a witness herein by the State,

5 having been first duly sworn, was examined

6 and testified as follows:

7

8 DIRECT EXAMINATION

9 BY MR. MERRILL:

10 Q Good afternoon, Detective.

11 A Good afternoon.

12 Q Can you please introduce yourself to the jury?

13 A My name is Detective Marty Dues. I work for
14 the Lyon County Sheriff's Office.

15 Q How long have you worked for the Lyon County
16 Sheriff's Office?

17 A Going on 13 years.

18 Q And what is your job title?

19 A I am a Major Crimes Detective.

20 Q How long have you been doing major crimes?

21 A Eight years.

22 Q And what are your job duties?

23 A We investigate -- Major Crimes Division, we
24 investigate the cases that are beyond the scope of the

1 average patrolman. Most of the cases we deal with are
2 sex crimes, homicides, exploitation of the elderly and
3 financial crimes.

4 Q And if you can tell the jury about your
5 training?

6 A I've attended over 2,000 hours of training
7 since becoming a law enforcement officer, including
8 crime scene -- crime scene reenactment, cell phone
9 analysis, homicide, entomology in relation to
10 homicides, child forensic interviewing, and various
11 others.

12 Q Okay. Now, are there ongoing trainings that
13 you participate in?

14 A Yes. There's annual training that's required,
15 and any new trainings or new updates, we stay on top
16 of.

17 Q Now, what is what is POST?

18 A POST is the Nevada Academy.

19 Q And does the Police Officer Standards and
20 Training, do they require additional training on a
21 yearly basis for what you do?

22 A Yes. There's a specific requirements of twice
23 at the rifle -- twice at the firearms range. We have
24 to maintain all of our proficiency with all of our

1 weapons. There's also mandatory ones on everything
2 from sexual harassment in the work place through
3 investigations to stay on to top of case law and/or any
4 changes to policy and procedures of NRS.

5 Q Thank you. Did you assist Detective Messmann
6 in this case against Thomas Bernal?

7 A I did.

8 Q And how did you initially become involved?

9 A We utilize an interview technique that usually
10 we use two people for the interview. And so, he had
11 asked me to assist him in the case.

12 Q I see. And was that the first time you got
13 involved with the case?

14 A Yes.

15 Q Was during the interview?

16 A Yes.

17 Q Okay. Had you reviewed the case at all prior
18 to the interview?

19 A I had -- I had reviewed the child forensic
20 interview.

21 Q And why did you review the child forensic
22 interview?

23 A So I know what we're walking into for the
24 interview, the physical interview with Mr. Bernal.

1 Q Okay. So, you mentioned that there's two of
2 you in the interview room, correct?

3 A That's correct.

4 Q Okay. Is that a typical process?

5 A Yes, it is now under the new trainings and
6 techniques that we've received.

7 Q Okay. And do you know why that is?

8 A It allows one person to interview while the
9 other person can watch for physical reactions from the
10 subject.

11 Q Now, how many interview -- was that
12 October 21st of 2019?

13 A That's correct.

14 Q And how were you dressed on that day?

15 A Actually, I was dressed exactly like I am today
16 except I didn't have my coat, and I didn't have my
17 sidearm.

18 Q So, you did not have your sidearm on that day?

19 A No, I did not.

20 Q So, no weapon on you?

21 A None.

22 Q Did you have a badge on you?

23 A Yes, but you wouldn't be able to see it because
24 I wear a three-piece suit with a vest.

1 Q Now, during the course of the interview with
2 the defendant, is he afforded the opportunity to leave
3 the interview?

4 A Yes.

5 Q And how so?

6 A When the interview is first begin, we give
7 what's called a Beheler Admonishment. Basically we ask
8 how he got there, do you have a vehicle, are you here
9 under your own free will. We explain that at any time
10 you're free to go, the door's only closed for privacy.
11 Any time you want to leave, feel free, and we normally
12 tell the person we will follow you up to the front just
13 to make sure you got out of the building.

14 Q And was the defendant ever denied an
15 opportunity to use the restroom?

16 A No. In fact, I believe Mr. Bernal used the
17 bathroom three times during the course of the
18 interview.

19 Q Okay. Detective, I'm going to go play for you
20 Exhibit 23. It'll probably be a time or two I'll stop
21 it.

22 A Okay.

23 (Video played.)

24 BY MR. MERRILL:

1 Q Okay. Detective, I'll stop it at 28 seconds.

2 What did we just watch there?

3 A That was request for bathroom break. And so,
4 the bathroom -- our building is half family services,
5 half law enforcement. There's a security door that
6 splits the middle. So, they were going to go use the
7 restroom. Detective Messmann walked him to the
8 security door and told him the bathroom's around the
9 corner, I'll wait here because you can't get in because
10 it's got a coded lock.

11 Q Okay. Did you ever follow the defendant to the
12 restroom?

13 A I did not, no.

14 Q Where would you go during -- for instance, this
15 bathroom break, where did you go?

16 A Probably my office. My office is between this
17 interview room and the secured room.

18 Q And do you recall how long the specific
19 bathroom break took?

20 A I have no idea, sir.

21 Q Okay. During the course of the entire
22 interview, did you ever threaten the defendant?

23 A No.

24 Q Did you ever yell at him?

1 A No.

2 Q Did you ever cuss at him?

3 A No, I did not.

4 Q Any other manner did you attempt intimidate the
5 defendant?

6 A No, I did not.

7 Q Or to try to coerce a confession?

8 A No, I did not.

9 Q Thank you.

10 A You're welcome.

11 THE COURT: Counsel?

12 MS. SCHUMANN: Yes, Your Honor.

13

14 CROSS-EXAMINATION

15 BY MS. SCHUMANN:

16 Q Good afternoon.

17 A Good afternoon.

18 Q So, just a couple of questions.

19 Isn't it true that you denied TJ a cigarette
20 break approximately two hours into the interview?

21 A No, it wasn't -- I didn't deny him one. He --
22 what he actual statement was a cigarette would be nice.
23 And I told him this isn't going to take very long. And
24 his response was okay.

1 Q So, you said -- so, you basically implied no,
2 this won't take that long?

3 A No, I didn't imply no at all. I just simply
4 said it's not going to take long.

5 Q Let me read the quote.

6 A Okay.

7 Q So, TJ said, "I really need a cigarette. We've
8 been in here a while." And you said, "Well, it's not
9 going to take very long."

10 A That's what I said.

11 Q Okay. Now, did you, either you or
12 Detective Messmann request a SART exam in this case?

13 A Detective Messmann would have, I guess. I
14 don't know. That's his part of the case. I'm not the
15 case agent on this.

16 Q Okay. So, you don't know if one was ordered?

17 A No, I don't.

18 Q What is the SART exam?

19 A A SART exam is a sexual assault response team.
20 That's what SART stands for. It's a medical --
21 existential medical exam that's done up at the Child
22 Advocacy Center up in Reno. And they do a -- it's not
23 an interview. They do like an in-take. Then they --
24 they'll collect any clothing that the person may have

1 on them that had evidentiary material on it. And they
2 will do swabs of all different areas to gain -- provide
3 back so we can send to the lab for testing.

4 Q And you're looking for trauma to the vagina
5 during SART exam?

6 A If that's the disclosure.

7 Q Okay.

8 MS. SCHUMANN: I pass the witness, Your Honor.

9 THE COURT: Okay. Mr. Merrill, any follow-up.

10 MR. MERRILL: Your Honor, one moment.

11
12 REDIRECT EXAMINATION

13 BY MR. MERRILL:

14 Q So, the defendant asked for a smoke break,
15 correct?

16 A Yes.

17 Q Okay. And you -- and you told him in a moment?

18 A No, I said this won't take long --

19 Q This won't --

20 A -- and he agreed.

21 Q Okay. And he indicated he understood that?

22 A Yes.

23 Q Okay. How soon afterwards did he get a smoke
24 break?

1 A After this was all said and done, and I,
2 myself, walked him out to the back of the building, and
3 we sat out there for a while. He had a couple of
4 cigarettes, and we sat there just, we just basically
5 talked.

6 Q You described just very briefly what a SART
7 exam is. I know you're not the case agent in this, but
8 would that have been necessary in this case?

9 A No.

10 Q Why not?

11 A Because the -- under the Nevada Revised
12 Statutes, this case, it's penetration no matter how
13 slight. At no time was there any sort of disclosure of
14 deep penetration of the vaginal area. So, no matter if
15 it's an eighth of an inch, that's penetration. And
16 then that meets the for the charges that we asked for.

17 MR. MERRILL: Thank you.

18 MS. SCHUMANN: Your Honor, can I ask for a
19 couple of follow-up questions?

20 THE COURT: Sure.

21 MS. SCHUMANN: Thank you.

22 THE COURT: Go ahead right ahead. If it's
23 beyond the scope, I'll let you do it.

24 MS. SCHUMANN: Thank you, Your Honor.

1
2 RECROSS EXAMINATION

3 BY MS. SCHUMANN:

4 Q So, just to clarify, Detective, TJ didn't get a
5 smoke break until after the end of the confession,
6 correct?

7 A Correct.

8 Q Which was a total of four and a half hours?

9 A About that, yes.

10 Q Which was two and a half hours after he asked
11 you for a cigarette break?

12 A Correct.

13 MS. SCHUMANN: No further questions.

14 MR. MERRILL: No follow-up.

15 THE COURT: All right. Detective Dues subject
16 to recall or no? So, is Detective Dues subject to
17 recall?

18 MR. MERRILL: Not by the State.

19 MS. SCHUMANN: No, Your Honor.

20 THE COURT: Okay. All right.

21 So, you're released from further testimony in
22 this case.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Don't discuss your testimony with

1 anybody, Deputy Dues. Okay? While this case is still
2 pending.

3 THE WITNESS: Yes, Your Honor.

4 Next witness.

5 MR. MERRILL: Your Honor, the State calls
6 Melissa Piasecki.

7 THE COURT: Counsel, come here for just a
8 minute.

9 (Discussion at bench among Court and counsel.)

10 MR. MERRILL: Your Honor, we're going to
11 rephrase who we're calling. We are going to call
12 Jennifer McCann.

13 THE COURT: Okay.

14 MR. MERRILL: We're going to rephrase that
15 again, Judge. We are going to call
16 Dr. Melissa Piasecki.

17 THE COURT: Okay. Come to up, Doctor.

18 If you just stay right there in the well and
19 raise your right hand and be sworn by the clerk,
20 please.

21 (Witness sworn.)

22 THE COURT: All right. So, come on around
23 here, Doctor, and have a seat, please.

24

1 MELISSA PIASECKI,

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 Good afternoon, Doctor. Can you please remove
9 your mask? Thank you very --

10 A Good afternoon.

11 Q Thank you very much.

12 Please introduce yourself to the jury.

13 A My name is Melissa Piasecki. P-I-A-S-E-C-K-I.
14 And I am a professor of psychiatry and a forensic
15 psychiatrist.

16 Q And tell us about your education?

17 A Well, the field of psychiatry is part of the
18 medical specialties. So, I went to college, and then I
19 went to medical school for my medical degree. And I
20 specialized as a physician in the area of psychiatry.
21 After practicing general psychiatry for ten years, I
22 decided to go back and do a one year fellowship in
23 forensic psychiatry. So, it was a total of five years
24 after medical school of training.

1 Q What is forensic psychology?

2 A It's the intersection of mental health and the
3 law, and it relates to lots of things that come up in
4 both criminal and civil matters that have to do with
5 behavior, thinking, people's mental state before,
6 during, and after incidents that relate to legal
7 issues.

8 Q I see. And do you have to obtain and, I guess,
9 hold to certain certifications with that field?

10 A Yes. For -- to practice medicine, you need a
11 medical license. And so, every state allows people to
12 get a medical license. And then to be board certified
13 in psychiatry and forensic psychiatry, you have to
14 demonstrate that you've completed that training program
15 that I -- that I mentioned, and then you have to take
16 exams and recertified or take the exams again every ten
17 years.

18 Q Okay. So, every ten years you got to do that,
19 take the exams over again?

20 A You take the exams, but you also do classes and
21 courses for continuing education during those ten
22 years. So, it's an ongoing education.

23 Q I see. And just tell us briefly how the
24 continuing education process works year by year.

1 A Every year I attend and participate in
2 different works shops or courses or classes, and as a
3 result of that, I either am learning new things, and in
4 forensic psychiatry I might be learning about new laws
5 that have been passed. Or I'm learning new angles or
6 new details of things that I knew a little bit about,
7 but and now having deeper or broader application.

8 A An example might be, even though my training is
9 not child psychiatry, during continuing education I
10 might learn something specifically about children. So,
11 it broadens and deepens my knowledge base.

12 Q I see. And what about any memberships that
13 you're involved in?

14 A Sure. I'm a member of the American Psychiatric
15 Association, and I'm a member of a group that's about
16 forensic psychiatry. It's called the American Academy
17 of Psychiatry and the Law.

18 Q And how are you employed currently?

19 A I'm employed by the State of Nevada with the
20 University of Nevada Reno School of Medicine.
21 Although, I should mention that my forensic psychiatry
22 work here today is separate from my university job.

23 Q Okay. And so, you do run a private practice as
24 well?

1 A Yes.

2 Q Now, have you testified in criminal cases
3 before?

4 A I have.

5 Q Okay. And what's the typical type of case that
6 you take on?

7 A Typically my work in criminal cases relates to
8 defense work. If I looked at all the cases that I do
9 in one year, majority are for the defense.

10 Q Okay. So, do you have a percentage of how much
11 work you do for defense versus prosecution?

12 A It's probably 75 percent defense work.

13 Q And 25 percent for the prosecution?

14 A Yes.

15 Q Now, today on this case, the State of Nevada
16 versus Thomas Bernal, you were retained; is that
17 correct?

18 A That's correct.

19 Q Okay. And you obviously get paid for what you
20 do?

21 A I get paid for my time.

22 Q Paid for your time. Okay.

23 And how does that work with your private
24 practice? Like, how much do you get paid for taking on

1 a case such as this?

2 A So, I just bill by the hour. I just have a fee
3 sheet, and when somebody contacts me about a case or
4 referring a case or wanting to retain me for a case, I
5 send them my fee sheet. And then we just estimate how
6 many hours I'll be spending on that case.

7 Q I see. Thank you.

8 Now, you prepared a report in this case; is
9 that correct?

10 A That's correct.

11 Q Okay. And in order to prepare that report,
12 what did you do?

13 A The report reflects my review of the materials
14 that were sent to me. So, in -- I reviewed all the
15 materials, and I obtained referral questions. And so,
16 I could focus my report on the specific areas that the
17 retaining attorney, which is you, asked me to address
18 in the report. So, I completed the report, submitted
19 it, and then prepared for court today.

20 Q Thank you.

21 And do you recall specifics what documents you
22 had to review?

23 A Yes. And I have my report with me that I can
24 refer to make sure that I'm including everything, if

1 that's acceptable.

2 MR. KALTER: If it refreshes her recollection.

3 BY MR. MERRILL:

4 Q Doctor, if I may approach? Do you have your
5 report with you?

6 A I do. I have a couple of small handwritten
7 notes on the front of it.

8 Q Doctor, if I could take your report, please,
9 and maybe your folder as well? Appreciate it.

10 A Report. The other documents in that folder
11 don't relate to the report.

12 Q Okay.

13 THE COURT: So, if she needs to refer to it for
14 refreshing her recollection, that's fine. But, I mean,
15 it doesn't need to be admitted into evidence.

16 MR. MERRILL: No, I'm not. I'm just refreshing
17 her recollection.

18 THE COURT: All right. So --

19 MR. MERRILL: Yes.

20 THE COURT: And, you know, just identify the
21 documents she's refresh her recollection with. Don't
22 testify from the documents. Okay? You're allowed to
23 refresh your recollections from them, but don't testify
24 from them. Okay?

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right.

3 BY MR. MERRILL:

4 Q So, Doctor, I'm going to hand you, again, your
5 report that you just handed me. Now, will it refresh
6 your recollection if you're able to look at that report
7 and review it?

8 A Yes.

9 Q Okay. If you could take a moment without
10 reading from it, and specifically look for things that
11 you reviewed. And then if you could just look up and
12 let me know that you've reviewed those parts?

13 A So, I've completed the --

14 Q Okay.

15 A -- review.

16 Q And is your -- has your memory been refreshed?

17 A It has.

18 Q Thank you. If I may just borrow that from you.
19 Doctor, what reports were you able to review in
20 this case?

21 A So, the materials that I reviewed included the
22 Lyon County Sheriff's Reports. It included witness
23 statements. It included the recording of the forensic
24 interview done with the -- with HS. It included the

1 report by the person who completed the child forensic
2 interview. It included some photographs that were
3 taken of the home inside and outside.

4 It included documents that were submitted as
5 part of restraining orders or protection orders. And
6 it included an analysis of a -- or a report regarding a
7 voice stress test that was done.

8 THE COURT: Go ahead.

9 BY MR. MERRILL:

10 Q Doctor, did you also review a report done by
11 William O'Donohue?

12 A Yes, I -- yes. Thank you for reminding me.
13 Yes, I reviewed Dr. O'Donohue's report as well.

14 Q Thank you. And so, you were asked four
15 questions; is that correct?

16 A That's correct.

17 Q And one of those questions, first question,
18 what is the prevalent and patterns of child sexual
19 abuse in families; is that correct?

20 A That's correct.

21 Q Okay. What is -- first of all, what was your
22 analysis of that question?

23 A That's a very broad question to report the
24 consensus or the general knowledge that we have about

1 how often does child sex abuse occur, what are the
2 patterns of child sex abuse within family units, and
3 what are some of the general -- what's some of the
4 general clinical information we have about child sex
5 abuse.

6 Q So, let's start with the last there. What's
7 some of the clinical documents and studies that you've
8 seen regarding child abuse?

9 A Sure. So, child sexual abuse has been studied
10 in a couple of different ways. One of the ways that a
11 number of studies have approached this is by asking
12 people who are just randomly selected. They're
13 not necessarily coming to a clinic or seeking any kind
14 of services. They're just random people off the
15 street. And then asking them if they've ever
16 experienced child sex abuse. And if so, who was the
17 perpetrator? Did they ever report it? What kind of
18 abuse was it?

19 And so, you get descriptive -- you get
20 descriptions from people. Then you can see how
21 commonly this has happened in our population in
22 general, what are the things that we see in terms of
23 people's disclosures, what do we see in terms of who
24 they identify as the person that abused them.

1 Q Okay. So, you mentioned studies and maybe how
2 common it is. From your research, were you able to
3 determine how common sexual abuse is?

4 A Well, the actual amount of child sex abuse or
5 the prevalence in a population is very difficult to
6 know because so much of it goes unreported. There are
7 estimates where 15 to 35 percent of women have a
8 history of having been abused as a child or adolescent.
9 About half of that in terms of men. But the actual
10 numbers are very, very difficult to know, because
11 there's no guarantee. There's no assumption that we --
12 that we know all of the abuse happened because so many
13 people don't disclose.

14 Q So, when -- if you have a variable like you
15 don't know how many people disclose, how can the
16 research show accurate numbers one way or the other?

17 A There's a couple of ways. So, one research
18 technique again is that general population, randomly
19 selected people. Another is to look at children who
20 the abuse has been confirmed, and that's been confirmed
21 either because there was kind of video evidence or
22 maybe there was some kind of physical evidence or
23 confession that matched up with the allegations.

24 And so, you can look at the rates of disclosure

1 for children who have the known abuse. And that's one
2 way that you can kind of come to more confident
3 conclusions about what percentage of people disclose
4 and what are patterns of disclosure.

5 But the bottom line is that in a group of
6 people within a population, it's very, very difficult
7 to know the actual prevalence rates of child sex abuse.

8 Q Doesn't seem quite like a hard science?

9 A It's a social science. And it's -- there's a
10 lot of investigation that is ongoing. But we don't
11 have a way to measure it like we do, for example,
12 somebody's blood type where we can have a very clear
13 test where we say we know exactly that this person
14 belongs in this group. We can't say that about child
15 sex abuse.

16 Q I see. You mentioned things of disclosure.
17 Can you touch upon that a little bit?

18 A So, when I say "disclosure", I mean just people
19 reporting that they experienced some kind of abuse.
20 And so, there are -- there's quite a bit of science and
21 research related to how people report abuse and don't
22 report abuse.

23 Clearly, it's an important element in the
24 criminal justice system, and it's also important in

1 terms of the clinical care of people. When you think
2 there's a trauma history, you wonder whether or not
3 they've experienced a trauma. Clearly it's easier to
4 treat somebody if they can describe what happened to
5 them?

6 Q I see. And has there been any research done
7 into sexual abuse either done by fathers or
8 stepfathers?

9 A Yes. If we look at child sex abuse, when we
10 look at the demographics or how it occurs in a
11 population, we see that child sex abuse, the majority
12 of it happens with somebody who is a close -- excuse
13 me -- family member. And so father, stepfathers,
14 uncles tend to be the individuals who are most commonly
15 identified as the perpetrator or abuser.

16 And there have been some large scale studies
17 that compare the frequency of reports that it was the
18 father versus a stepfather. So, we do have some data
19 from large groups of people that help us understand how
20 common it is to have those different people as the
21 abuser.

22 Q And do you have any specific numbers for who
23 does the abusing? Does that make sense?

24 A So, child sex abuse is more common with

1 stepfathers than it is with biological fathers. And
2 the reports from, again, large population studies
3 suggest that it's about seven times more common with
4 stepfathers than biological fathers.

5 Q Has there been any studies that you found that
6 explain why that's the case?

7 A The trend for child sex abuse is that as you
8 become less genetically linked to somebody, the more
9 common that the -- that the abuse increases. So, for
10 example, a biological father would be less common than
11 a biological uncle. So, as you get that closer
12 biological link to an individual, the sex abuse is less
13 common.

14 Stepfathers don't have that genetic shared
15 quality, and that may be one of the reasons that we see
16 the increase frequency. It could also be that the
17 stepfathers don't have the emotional bond. They
18 perhaps weren't there for the child's entire life, and
19 that could be a factor as well.

20 Q All right. So, let me ask you another
21 question, question number two. What are the different
22 types of disclosure patterns of child sexual abuse?

23 A I mentioned earlier there's a lot of research
24 that goes on about disclosure. And I think there is so

1 much research because people may think that it would be
2 pretty straightforward. Something bad happens to you,
3 you tell somebody something bad happened to you. But
4 evaluating and following children who have no histories
5 of sex abuse show that that's actually not very common.

6 It's very rare for somebody to report sex abuse
7 right away. And the majority of people actually never
8 disclose as children or adolescents. And so, the --
9 sometimes it's not intuitive for folks, that there
10 would be a delayed disclosure or just a nondisclosure.

11 So, one of the patterns is a delay. Another
12 pattern is just never disclosing during childhood and
13 possibly not even during an adulthood.

14 Q Why would there be a delay at all in
15 disclosing?

16 A There's a number of reasons that children and
17 adolescents would delay or not disclose. They're
18 considered barriers to disclosure. Some of the
19 barriers for children to disclose is the relationship
20 that they have with the person who's abusing them. So,
21 that person may be an authority figure that they want
22 to please. It could be an authority figure that has
23 control over their environment. Maybe they depend on
24 that person to take care of them. And so, there's this

1 difficulty thinking you might get somebody into trouble
2 if they're going to also be the person who takes care
3 of you.

4 There's reasons that some children and
5 adolescents report that they're afraid of what would
6 happen to the abuser. That they see this person as
7 somebody they're close to. Maybe it's their biological
8 father or somebody else they're very close to, and they
9 don't want to see something bad happen to the person.
10 Like go to jail or get into trouble.

11 Some children and adolescents are worried that
12 they'll be blamed, that somehow they'll be seen as
13 having brought this on themselves. And some children
14 are confused. They -- they're not sure that if they
15 did say no, did they say yes? And so, there's a lot of
16 internal confusion that some people go through trying
17 to sort out if they're actually responsible for the
18 abuse themselves. And children are -- will commonly
19 believe that they're responsible for things that
20 they're not responsible for.

21 Another reason that children sometimes say they
22 don't disclose is they don't want their mother to be
23 hurt. If it's -- if it's the partner of the mother,
24 the husband or the boyfriend, that they don't want to

1 worry or hurt their mother by bringing this on. And
2 then some children say that they're afraid that there
3 could be some kind of negative impact on them, and that
4 they -- that they would be worried about having to
5 leave the home or being kicked out or sent to live with
6 a relative, and they don't want that.

7 And so, they don't want to even to, you know,
8 raise this issue for fear of that happening.

9 Q Now, we talked about delay, but what about
10 nondisclosure? Did -- are there any studies about
11 nondisclosure?

12 A There are. Nondisclosure is fairly common.
13 And it's when those obstacles that I talked about just
14 never resolved. That the person never made it through
15 whatever the obstacle was, and so, they never reported
16 it to anybody.

17 Q I see. Now, there's a large range of children.
18 We'd probably agree between 0 and 18-years-old. Is
19 there a range -- or does -- let me rephrase that. Is
20 there -- does the pattern change at all with the
21 different ages of children?

22 A It does. Very young children may not
23 understand victimization. They may not have a good
24 understanding that there's something that's abnormal

1 that they need to report it. So, very young children
2 are the least likely to spontaneously report sex abuse.
3 Older children are somewhat more likely to report if
4 because they have better verbal skills, and they have
5 more awareness that they are being victimized. But
6 they still have all the obstacles that I mentioned that
7 could either delay or lead to nondisclosure.

8 Q I see. And is that true of teenagers?

9 A It is.

10 Q Is the reporting in this case consistent with
11 research on victim reporting?

12 A So, the reporting on this case, in which my
13 understanding is, that the alleged sex abuse occurred
14 over a period of couple of years, without disclosure.
15 And that was followed by a disclosure that was prompted
16 by a direct question. That is typical. And that's
17 typical in a couple of ways. One is the long period of
18 nondisclosure with a close family member being the
19 alleged abuser.

20 The other way that it's typical, is that the --
21 that the direct question, did this happen to you, was
22 framed in a way, based on my understanding, that the
23 victim heard that the person who had allegedly abused
24 her had told somebody that this was happening. So, it

1 was no longer her that was responsible for having to
2 make the disclosure. That somebody else had sort of
3 released that information into the world, and she was
4 no longer responsible personally for anything that
5 would happen as a result.

6 So, those two elements are quite typical. Or
7 quite consistent I guess I would say. Not so much
8 typical but consistent with what we know with delayed
9 disclosures.

10 Q And then what are the mental or physical health
11 issues experienced by victims of childhood sexual
12 assault?

13 A So, some children experience the sex assault as
14 very traumatic. And would have a kind of a trauma
15 syndrome of difficulty sleeping and tension and
16 problems with calming themselves down. If the -- if
17 the abuse happened over a period of time and there
18 wasn't any one particularly dramatic physical trauma,
19 then what happens is that there is, for the victim,
20 some complex psychological problems that emerge.

21 The person may become anxious, depressed, act
22 out in terms of behavioral demonstrations, angry. The
23 person may have problems with their ability to focus
24 and concentrate, and that could show up in schoolwork.

1 Children who have gone through childhood sex abuse and
2 who are kind of struggling to find their way back to
3 normal, sometimes experiment with drugs and alcohol.
4 Sometimes they self-harm.

5 And as adults, sometimes individuals who have a
6 history of child sex abuse, have difficulty with
7 relationships and their own sexuality. So, there's a
8 number of psychological and mental and relationship
9 issues that can result from child sex abuse.

10 Q Now, does every victim react the same way to
11 child sexual abuse?

12 A No. There's so many different things going on
13 for any individual person in terms of their
14 psychological wellness prior to the abuse, the type of
15 abuse, the way that the abuse was dealt with, if it was
16 disclosed, all of those things can change the way the
17 person behaves after the abuse.

18 Q So, if a child doesn't act any particular way
19 or acts different than a different child that was also
20 sexually abused, would that be consistent with studies
21 in your research?

22 A Yeah, but the studies show -- what research
23 shows is that there's just highly individual ways that
24 people respond to these -- to the abuse. The long term

1 affects in terms of depression, anxiety, experimenting
2 with substance, those long term things seem to
3 aggregate and be consistent. But in the short term,
4 it's very, very -- very variable.

5 Q Doctor, thank you for your time.

6 THE COURT: Mr. Kalter, do you have any
7 questions for Dr. Piasecki?

8 MR. KALTER: I do. Thank you.

9 THE COURT: Good. Go ahead.

10

11 CROSS-EXAMINATION

12 BY MR. KALTER:

13 Q Good afternoon, Doctor. It's good to see you.

14 A Good to see you as well. Thank you.

15 Q You had mentioned that you looked at some
16 research that showed that when comparing fathers as
17 perpetrators to stepfathers as perpetrators, in this --
18 at least in this particular study, that there was a
19 seven times increase or -- that the stepfather would do
20 it over a biological father?

21 A Yes.

22 Q Okay. But that study doesn't say that in any
23 given case where there's an allegation against a
24 stepfather, that means it's -- the allegations are

1 true?

2 A That's correct.

3 Q Okay. As far as delay in reporting, you
4 testified that delays in reporting are common for many
5 reasons and even full nondisclosure at all ever is not
6 out of the question, right?

7 A That's correct.

8 Q Okay. Just because somebody alleges something
9 and they delay the reporting, doesn't in and of itself
10 mean the allegation is true?

11 A That's correct.

12 Q Okay. You talked a little bit about one reason
13 a child may delay reporting or not report at all is
14 because they really loved this person that's doing them
15 this harm?

16 A That's true.

17 Q Okay. Now, that would be less true if they
18 actually really did not like that person and did not
19 want them in their life?

20 A That particular obstacle to disclosure would
21 be -- would not be significant, you're correct.

22 Q Okay. So, if they actually wanted this person
23 out of their house, out of their life, that that
24 obstacle is largely removed?

1 A True. There may be related obstacles, but that
2 one would be removed.

3 Q Understand. You had mentioned something about
4 they didn't want an impact on themselves, such as
5 getting removed from the house they're in or the
6 situation that they currently have as a reason for
7 delay or even nondisclosure?

8 A Yes.

9 Q Okay. If the alleged victim in fact wanted to
10 not live with a mother or a stepfather and wanted to be
11 with their other biological parent, that too would
12 remove, largely remove that obstacle?

13 A Possibly, yes.

14 Q Okay. So, you talked about, a little bit about
15 the variable responses that children can experience
16 that have actually been sexually assaulted or molested.
17 Many of these children are traumatized, right?

18 A Yes.

19 Q Okay. And that can result in post traumatic
20 stress disorder?

21 A Yes.

22 Q Depression? Anxiety?

23 A Yes.

24 Q What is post traumatic stress disorder?

1 A Post traumatic stress disorder is a, it's a
2 diagnosis in psychiatry, and it relates to somebody
3 who's experienced something that's really overwhelming,
4 maybe life threatening. After that experience or
5 sometimes a series of experiences like that, a person
6 has intrusive memories or nightmares. They have
7 increased or tension anxiety. They have -- they kind
8 of react to cues or things that remind them of the
9 trauma with anxiety or maybe any physical reactions.
10 And they often have changes in their thinking about
11 their future and what the world is like. Kind of
12 changes their world view.

13 Q Thank you. And so, you mentioned maybe a
14 series of events. Is it more likely for a child that
15 is digitally penetrated one time as opposed to five to
16 six times a week over a couple of years, is it more
17 likely that that person would have post traumatic
18 stress disorder than someone that it just happened one
19 time? So, it's likelihood?

20 A So, when somebody's experienced a series of
21 traumas we call that complex trauma. And complex
22 trauma is associated with a higher likelihood of post
23 traumatic stress disorder, yes.

24 Q Okay. And as you stated, this could be

1 reoccurring nightmares, this could be anxiety, this
2 could be hypervigilance, this could be an exaggerated
3 startled response, say they see the person and they
4 immediately tense up; is that right?

5 A Yes, that's all consistent with post traumatic
6 stress disorder.

7 Q Okay. And those are -- and many of those are
8 outward -- someone watching could notice a change in
9 behavior if someone started to show signs of post
10 traumatic stress disorder?

11 A So, some of the behavior you described, yes,
12 would be -- would be observable to another person, yes.

13 Q Okay. And I would say, especially with older
14 victims say as opposed to a five-year old kid, say a
15 14, 15-year-old kid, one of the symptoms or things they
16 do is trying to avoid being further molested?

17 A So, avoidance behavior is part of post
18 traumatic stress disorder. And if somebody had post
19 traumatic stress disorder and they had the choice to
20 avoid the thing that was traumatic to them, that would
21 be the case.

22 Q And can you give some examples of what
23 avoidance?

24 A So, an example would be if somebody's post

1 traumatic stress disorder was because they saw a car
2 wreck happen in front of them, and it was sort of
3 overwhelmingly -- that there was -- they saw something
4 really bad happen to another person in that car wreck
5 and it overwhelmed them and had bad nightmares and
6 couldn't get it out their head, they might avoid that
7 intersection where the car wreck happened. They might
8 take another route and just avoid driving in that
9 specific area.

10 Q And the same could be true if the trauma or the
11 traumatic experience was being sexually assaulted,
12 right?

13 A It could be.

14 Q Okay. I'm not saying that it would happen in
15 every case but avoidance -- someone that has suffered
16 post traumatic stress disorder from being sexually
17 assaulted on a number of occasions, could, if had the
18 ability, to avoid when possible would make sense?

19 A It would. There's a little bit of a broader
20 piece of this which is -- avoidance is, again, when you
21 have an opportunity to avoid a very specific kind of
22 trauma. But that's kind of based on an assumption that
23 the person has post traumatic stress disorder. Not
24 everybody with the experience of a trauma is going to

1 have post traumatic stress disorder. They may have
2 other kinds of negative responses to it but not
3 necessarily the full PTSD response.

4 Q Okay. I understand.

5 During your direct examination with
6 Mr. Merrill, you had mentioned, and I think this was in
7 the realm of delay, that people -- or victims don't
8 want to be the one to divulge it, but the fact that
9 that was taken away from them because it's come out
10 from somebody else would be -- would get rid of that
11 obstacle?

12 A Yes, it would -- it would facilitate or make it
13 easier for that person to report or disclose.

14 Q Isn't it very unusual in child sex assault
15 cases for a child victim to tell their perpetrator I'm
16 going to tell another authority figure before just
17 going and telling that authority figure?

18 A I'm actually not sure how to answer that
19 because I don't think I've ever seen that particular
20 question studied or developed. So, I have some sort of
21 clinical observations, but I don't have sort of a
22 research approach to answer.

23 Q Well, how about in your experience?

24 A Yeah, in my experience it would be unusual for

1 someone to warn an abuser oh, by the way, I'm going to
2 report you or I'm going to report this abuse. That
3 would -- that would create an additional obstacle
4 rather than decreasing obstacles for reporting.

5 Q Doctor, thank you for your time.
6

7 REDIRECT EXAMINATION

8 BY MR. MERRILL:

9 Q Just briefly, Doctor. We talked about choice
10 to avoid. Now, what if the child lives with the
11 perpetrator?

12 A That's part of the dilemma in child sex abuse
13 for the child. If they live with the perpetrator and
14 if the perpetrator is somebody who has a role caring
15 for them, caring for the family members, providing in
16 some ways to the family's welfare, an attachment to the
17 mother, all of those create difficulties in terms of
18 avoiding that person. If you depend on that person for
19 your basic needs, you probably can't avoid that person
20 in the home.

21 Q And if the perpetrator is mostly home when the
22 victim's home, is that more difficult for the child to
23 avoid?

24 A It is especially for younger children. You can

1 imagine a 17 or 18-year-old could probably get out of
2 the house and find other things to do during parts of
3 the day, but younger children don't have that
4 independence. And so, they're pretty much in the home
5 with caregivers who may be helping them just kind of
6 take care of their daily needs such as meals and
7 clothing and homework and things like that.

8 Q Okay. And perhaps not having a driver's
9 license or not having a car, would that be a barrier to
10 leave the house?

11 A It would.

12 Q Now, if -- we talked about discloser a little
13 bit. Now, if a perpetrator tells another person first
14 and that person verifies with the child, how does that
15 play into your analysis?

16 A My analysis is that children -- and I think
17 there's some specifics from the records that I reviewed
18 here, children are reluctant to disclose when they
19 believe that the disclosure will have some negative
20 effect on other people. Could be the perpetrator. It
21 could be themselves. Could be other family members.

22 And they feel responsible for those potential
23 negative things happening. They feel like they are in
24 some ways responsible for the fate of others, and it's

1 very difficult for a child to sort through that level
2 of responsibility. So, they're really trying to kind
3 of weigh, you know, what's the right thing to do here.
4 If somebody else tells them we know this has happened
5 or over somebody else said this has happened, is it
6 true, that weight is off their shoulders. It's no
7 longer their responsibility to choose to put that
8 information out there. Somebody else has taken that
9 responsibility from them, and as a child, they're no
10 longer in that dilemma.

11 Q Thank you, Doctor.

12 THE COURT: Is Dr. Piasecki subject to recall?

13 MR. MERRILL: Not by the State.

14 MR. KALTER: No, Your Honor.

15 THE COURT: Thank you for your testimony,
16 Doctor.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Perfect timing. 4:54
19 according to my clock.

20 Okay. So, ladies and gentlemen, we're going to
21 take the evening recess at this point.

22 So, as always, during the recess we're about to
23 take you're admonished that it is your duty not to
24 discuss amongst yourselves or with anyone else --

1 well, let me ask you this first.

2 How is everything going? Do you have -- do you
3 have everything that you need back in the jury room?
4 Is everything going okay for you?

5 All right. So, we'll get started again right
6 at -- right at 9:00 o'clock tomorrow morning. So, if
7 you get here about ten minutes early so that we can get
8 going. You know? I like to kind of move these things
9 along so everybody is prepared and ready to go. So,
10 we'll try to get started as early as we can. Well,
11 we'll get started at 9:00 o'clock. Okay?

12 So, and try to get here about ten minutes
13 beforehand. Okay. Great. All right.

14 So, during the recess we're about to take,
15 you're admonished that it is your duty not to discuss
16 amongst yourselves or with anyone else any matter
17 having to do with this case. It is your further duty
18 not to form or express any opinion regarding the guilt
19 or innocence of the defendant until the case has been
20 finally submitted to you for decision.

21 You are not to read, view, or listen to any
22 report in the newspaper, radio, television, or the
23 Internet concerning this case, nor allow anyone to read
24 or comment upon them to you or in your presence. This

1 includes viewing any type of social media relating to
2 the case. You are not to investigate or attempt to
3 obtain any additional information about this case
4 outside the courtroom.

5 Do not visit the scene or attempt any
6 investigation on your own. Do not do any Internet
7 searches in relation to this matter. Do not read any
8 legal text or book regarding any issue raised in court.

9 Should any person attempt to discuss the case
10 with you or in any manner attempt to influence you with
11 respect to it, you are to notify the bailiff, who will
12 in fact notify the Court, and I'll take care of it.

13 Have a good night, ladies and gentlemen. We'll
14 see you in morning.

15 (Jury exits.)

16
17 THE COURT: All right. So, anything to bring
18 up to the Court?

19 MR. MERRILL: Your Honor, we have one more
20 witness, Jennifer McCann. Again, I believe that during
21 cross of HS, there's specific reference that it
22 happened once when she was 13 and 14, and there was no
23 other times kind of implication. So, I intend to ask
24 Jennifer McCann to tell about this disclosure when she

1 was 13, there's one when she was 14, and did she tell
2 you other times.

3 During the interview, HS tells Jennifer McCann
4 it happened five times a week almost. Which is
5 consistent with my testimony but she was impeached on
6 that of fact. So, I don't intend to go over the entire
7 interview by any means or even play the video, but I do
8 intend to ask those specific questions.

9 THE COURT: Okay. Well, I think they're -- you
10 know, with the defense's theory of fabrication or
11 improper influence, I mean, I think it's -- and their
12 cross-examination on directly of her directly on the
13 forensic interview. You know, it's certainly a subject
14 that can be inquired into. But I believe one of the
15 questions was even during the forensic interview you
16 said it was happening for the last year, five times a
17 week.

18 MR. MERRILL: I mean, I believe it was asked in
19 a different way that gave you the impression that she
20 said it only happened once when she was 13, once when
21 she was 14, and then maybe some other times in between.
22 But it gave -- at least gave me the impression that she
23 said it happened once or twice. Once when she was 13.
24 Once when she was 14. When really Jennifer McCann just

1 asked her tell me specific times this happens. HS
2 tells her, not that there wasn't a bunch of other
3 times. That was the implication.

4 THE COURT: Okay. You have anything?

5 MR. KALTER: Well, it's his case in chief. He
6 can put her on.

7 THE COURT: Yeah. You know, I mean, so you can
8 put her on.

9 It's admissible because of their defense of
10 recent fabrication in their cross-examination on the
11 child forensic interview. You know, specifically. So,
12 and specific statements made by her during that child
13 forensic interview.

14 Okay. So, but maybe not all of it's
15 admissible. So, as long as you understand that, you
16 know, you -- it sounds like you're eliminating what her
17 testimonies going to be to those areas.

18 MR. MERRILL: Yeah, that's right.

19 THE COURT: Just make your point that it wasn't
20 just two events she was talking about. There were more
21 she just was reluctant to tell them or whatever.

22 MR. MERRILL: Right.

23 THE COURT: As opposed to -- so, all right.

24 So, very good. All right.

1 So, and then you'll be ready to go right after
2 that?

3 MR. KALTER: Yes, Your Honor. I mean, and to
4 just to give the Court kind our of estimation. I think
5 we're going to take all of tomorrow and one probably
6 short witness Friday morning.

7 THE COURT: Okay. So, we're going to continue
8 to go on. All right? So, I don't want you to schedule
9 a witness tomorrow morning -- Friday morning. If that
10 witness can be done Thursday evening is what I'm
11 saying.

12 MR. KALTER: Yeah, I -- so, here's the
13 situation. The witness that I was referring to would
14 be Dr. O'Donohue. He -- we expect to take the entire
15 rest of the day with our other witnesses. I think if
16 the defendant testifies -- what?

17 THE COURT: Do you think it's going to take all
18 day?

19 MR. KALTER: Yeah, I do. I do. I think we
20 have a number of witnesses to call, so.

21 THE COURT: Okay. But, if you're done at
22 2:00 o'clock.

23 MR. KALTER: That's not a possibility.

24 THE COURT: Okay. All right. Well, you're

1 estimating your case. Okay?

2 I just want -- I'm just saying that I want
3 witnesses available, you know, in the event you know?
4 Okay. So, that's fine. Because I was under the
5 impression that you were scheduling them to testify
6 tomorrow morning, so. From Monday --

7 MR. KALTER: That was Dr. Deborah Davis.

8 THE COURT: From Monday's conversation. So,
9 and that's fine.

10 MR. KALTER: Deborah Davis.

11 THE COURT: Yeah. I'm not going to tell you
12 how to put on your case. Okay? I just want to, you
13 know, say I want the case to move along. I don't want
14 the jury to be here forever.

15 MR. KALTER: You know, I --

16 THE COURT: I don't want to -- you know, I just
17 don't want to send them home at 2:00 o'clock in the
18 afternoon saying we have no other witnesses.

19 MR. KALTER: That won't happen.

20 THE COURT: Okay. Well, I'm just saying. All
21 right. Thank you.

22 All right. So, anything else?

23 MR. KALTER: No, Your Honor.

24 MR. MERRILL: No, Judge.

1 THE COURT: Okay. With all that being said,
2 we're in recess.

3 (Evening recess.)
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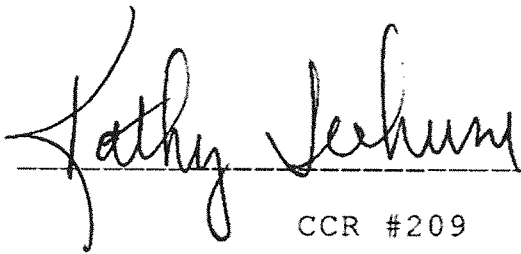
STATE OF NEVADA)

)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
18th day of May, 2021.



CCR #209

1 Case No. 20-CR-00099
2 Department No. I
3

4 IN THE THIRD JUDICIAL DISTRICT COURT
5 IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA
6 BEFORE THE HONORABLE JOHN SCHLEGELMILCH
7 DISTRICT JUDGE, PRESIDING
8
9

10 THE STATE OF NEVADA,)
11)
11 Plaintiff,)
12)
12 vs.)
13)
13 THOMAS JASON BERNAL,)
14)
14 Defendant.)
15)
15 _____)

16
17 TRANSCRIPT OF PROCEEDINGS
18 VOLUME 3
19 JURY TRIAL
20 THURSDAY, NOVEMBER 5, 2020
21 YERINGTON, NEVADA
22

23 Reported by: Christy Joyce
24 Nevada CCR #625

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A P P E A R A N C E S

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1 YERINGTON, NEVADA, THURSDAY, NOVEMBER 5, 2020

2 -oOo-

3 THE COURT: So anything to bring up to the Court
4 before we get started today?

5 MR. MERRILL: Not by the State, Judge.

6 MR. KALTER: No, your Honor. Just as far as our
7 order goes, we have a witness to call after the State rests,
8 and then we would ask for a recess to set up the Zoom.

9 THE COURT: That would be fine.

10 MR. KALTER: Thank you.

11 THE COURT: Yeah, after your -- Yeah. I mean, I
12 want to make sure it's working correctly anyway.

13 MR. KALTER: Thank you.

14 THE COURT: I absolutely want to make sure it's
15 working correctly.

16 MR. KALTER: Thank you.

17 THE COURT: Okay. There was a bench conference
18 that we had yesterday that I didn't put on the record, so I
19 just wanted to put that on the record first thing this
20 morning. And that was just my verification with defense
21 counsel that Dues was in fact released from your subpoena; is
22 that correct?

23 MR. KALTER: It is.

24 THE COURT: So this way he can sit in the court.

1 Put on a mask.

2 UNIDENTIFIED SPEAKER: Sorry.

3 THE COURT: So I just want to make sure that
4 that's on the record and there's no question in relation to
5 that.

6 MR. KALTER: Correct.

7 THE COURT: All right. So, okay. So,
8 Mr. Merrill, what do you got this morning?

9 MR. MERRILL: Your Honor, I have Jennifer McCann,
10 child forensic interviewer, and then the State will rest.

11 THE COURT: Okay. Fair enough. Jury all here?

12 THE BAILIFF: Yes.

13 THE COURT: All right. Bring them in.

14 Counsel stipulate to the presence of the jury?

15 MR. MERRILL: Yes, Judge.

16 MR. KALTER: Yes, your Honor.

17 THE COURT: Okay. Mr. Merrill, continue.

18 MR. MERRILL: Thank you. State calls Jennifer
19 McCann.

20 THE COURT: Ms. McCann, please come forward. If
21 you could stand right there, raise your right hand, and be
22 sworn by the clerk.

23 (The witness was sworn in)

24 THE COURT: All right. Thank you, ma'am. Please

1 come around here and have a seat.

2

3

JENNIFER MCCANN

4

Called as a witness on behalf of the

5

State, having been first duly sworn,

6

Was examined and testified as follows:

7

8

DIRECT EXAMINATION

9

By Mr. Merrill:

10

Q. Good morning. Please introduce yourself to the

11

jury.

12

A. My name is Jennifer McCann. And I am a forensic

13

interviewer at the Child Advocate Center in Washoe County.

14

Q. Okay. Could you spell your last name for the

15

court record?

16

A. Yes. M-c-C-a-n-n.

17

Q. And you just indicated that you are a child

18

forensic interviewer; is that correct?

19

A. Correct.

20

Q. And what is that entirely?

21

A. So I interview victims, specifically child

22

victims, that have been sexually abused, physically abused,

23

or witnesses to extreme violence.

24

Q. And how long have you been doing that

1 specifically?

2 A. A little over two years.

3 Q. And, your office location, is that there in Reno?

4 A. Correct. In Washoe County, yes.

5 Q. Okay. And if you could tell the jury about your
6 training and education.

7 A. Yeah. So I have a Master's degree in human
8 development and family studies focusing on child development.
9 I have gone through the advanced and basic training for
10 CornerHouse, which is the protocol that we use at our center.
11 I also have an additional 150 hours of training related to
12 forensic interviewing. And then I have taken the basic and
13 advanced training for CornerHouse. I think I already said
14 that.

15 Q. And what is the CornerHouse forensic interview
16 protocol?

17 A. So we are an accredited agency. So that means
18 that we're held up to higher standards. And we're accredited
19 by an agency called the National Children's Alliance. And so
20 one of the things that is required by them is that you use a
21 protocol that they recognize. CornerHouse is one of those
22 protocols that's recognized. And it's recognized across the
23 nation. And so that includes certain aspects, including it
24 being child-led, semi-structured, and forensically sound when

1 talking to children and/or individuals.

2 Q. Is there a specific format that the CornerHouse
3 protocol calls for?

4 A. Yes. So there's four parts of the interview.
5 And so the first part is building rapport and orienting the
6 child to the room. So when the child comes in the room, I
7 ask, you know, just some little questions about what they
8 like to do for fun. And then I'll orient to them to the
9 room. I let them know that there's cameras in the room. I
10 also let them know that there's a team of people that I work
11 with that can hear us talking. And then I kind of go over
12 some just laying the foundation for what's going to happen
13 for the rest of the time that we're talking.

14 After that, I usually will seek information about
15 why they've come to talk to me. And I do that through free
16 narrative, allowing them to tell their experience in their
17 own words. Because they are the experts in their own
18 experiences.

19 And then after we kind of go through a free
20 narrative then I'll ask some open-ended questions to collect
21 details about the experiences that they've experienced. And
22 then at the end, I end respectfully. I try and transition in
23 to a more neutral topic. I also ask them, you know, how
24 they're feeling about what we talked about. And then we're

1 done.

2 Q. And those four phases that you touched upon, is
3 that what CornerHouse protocol calls for?

4 A. Yes.

5 Q. So, let's touch very quickly upon the first
6 phase, building rapport, what is the purpose of building
7 rapport?

8 A. So it's really to lay the foundation for the rest
9 of the interview. It gives me an opportunity to talk with
10 the child about a neutral topic so I can assess their
11 communication skills as well as their, like, mental age,
12 their developmental skills. It gives them an idea of what
13 types of questions I'm going to ask during the interview and
14 then to get an idea of how I communicate with them as well.
15 And then it just lays some guidelines down.

16 So we talk about how I, you know, it's okay to
17 not know an answer and you can tell me that you don't know an
18 answer. It's okay to do that. We don't want to make up
19 anything. I also let them know that to feel comfortable to
20 talk about how they normally would talk, using words that
21 they normally use.

22 Also we go over truth and lie. And I ask that
23 they promise to only talk about the truth when we're talking
24 in that room. As well as if they don't understand anything

1 they're free to let me know that they don't understand or,
2 you know, I need to repeat the question in a different way.

3 Q. And, then the second phase, seek information,
4 what's the purpose of that phase?

5 A. So that's really for the child to share their
6 experience, like I said, in their own words. And almost all
7 of the time I will always ask the child tell me what you came
8 to talk to me about today. Some of the children know what
9 they came to talk to me about. Others don't. And so that
10 gives me a gauge of what they do know. And so, you know, if
11 they tell me I came to talk to you about this, then that
12 gives me an opportunity to have them use their free narrative
13 and tell me about the experiences that they've had.

14 Q. And the third phase, explore statements, what's
15 the purpose of that part?

16 A. So that part is to get more details and more
17 clarifying details about what happened in this experience
18 that they shared with me. And so getting elements of certain
19 experiences such as places, people, you know, timelines,
20 things of that nature.

21 Q. How do you, I guess, obtain more information,
22 what types of questions are you asking of the child?

23 A. So we always start with open-ended questions to
24 get as many, you know, free narrative answers as we can.

1 There are times we might have to narrow in and ask some more
2 pointed questions. I'll use some cued invitations, which
3 means that if a child has already brought up a topic and I
4 want to know more about that topic, then I'll kind of go back
5 to the topic and ask them to tell me more about that
6 particular topic that they've already talked about or
7 mentioned. And in this case it's usually sexual abuse. So
8 that's mostly the children that I deal with.

9 Q. And the last phase, phase four, end respectfully,
10 what's the purpose of that?

11 A. So it's really to, like I said, transition out of
12 the interview. We, you know, often times talk about some
13 experiences that are the worst of their life, some of the
14 worst things that have happened, and they have just spilled
15 to me these traumatizing experiences. So I kind of like to
16 leave on a more happier note, and so I'll usually ask if they
17 have anything fun planned coming up, if there's anything
18 they're looking forward to. I also might ask if they have
19 some people in their life they trust or, you know, if they
20 have some resources in their life. That's not always asked.
21 But I for sure like to end in a more positive note so that
22 they're not left just thinking about the last thing that we
23 talked about was something bad or traumatizing that happened
24 to them.

1 Q. How many -- During the course of your career, how
2 many child forensic interviews have you performed?

3 A. 785.

4 Q. And how many of those involved allegations of
5 sexual abuse?

6 A. I wish I could give you an exact stat. But, the
7 center that I work out of, we run stats often, and 99 percent
8 of the cases that come in to our center are child sexual
9 abuse cases.

10 Q. And, the children that you've interviewed, do
11 they just come from Washoe County or do they come from other
12 areas of the State? How does that work?

13 A. Yeah. So we deal with our local law enforcement
14 agencies in Washoe County, but then we also deal with rural
15 counties. We're one of the only child advocacy centers in
16 northern Nevada besides Elko. So we serve the counties that
17 are closer to Washoe County, including ones in California,
18 our rural counties in Nevada. As you get towards the
19 southern part of the state, Vegas can handle those. So we
20 deal with a gamut of counties.

21 Q. So I want to talk just in general about a child
22 forensic interview. If you could just take me through the
23 beginning. How does that work?

24 A. As far as like getting child --

1 Q. Yeah. Let me clarify. I apologize. When do you
2 first find out that you have to interview a child?

3 A. Oh, okay. So, all of our cases are brought to us
4 through law enforcement or some type of investigation team.
5 We also deal with the FBI and tribal lands too. So that is,
6 you know, they've gotten to that point where they feel that
7 there's an investigation that needs to happen. Our law
8 enforcement people will schedule a forensic interview. And
9 they have access to the calendar. And then we meet 15
10 minutes before the interview. Anyone who is involved in the
11 case will meet. So, law enforcement, if there's a district
12 attorney that observes the interview, any human services or
13 CPS workers, we have medical workers in our center. So if
14 there's medical staff that may want to sit in, they're
15 invited also.

16 Q. And what's the purpose of meeting with law
17 enforcement and sometimes district attorneys and other
18 individuals?

19 A. So we meet with law enforcement always ahead of
20 time. They're always the ones that are always there. And
21 it's really for me to get a good idea about the allegations,
22 how the children, you know, operated, how they, you know, if
23 they have any developmental things that might come up. Those
24 are the things that I might need to know about. As well as

1 some details about how the disclosure came about, and so how
2 the child initially talked about these allegations and who
3 they talked to about them. You know, where the things
4 happened at, the people that are involved in this child's
5 life. Those are all things that are helpful for me when
6 talking to the child.

7 Q. So, in general, once you've talked to or had your
8 meeting, what happens at that point?

9 A. So, after that, I go out and get the child in the
10 lobby, I briefly introduce myself to the caregiver or who
11 ever brought the child. And then I bring the child back to
12 the interview room and we start the interview.

13 Q. And, again, in general how do you begin the
14 interviews?

15 A. So I always let the child know that they are
16 being video recorded. So we use video and audio recording.
17 And I let them know that there is a team of people watching
18 us. I usually give them a brief synopsis on my job, that
19 it's my job to talk to children about things that have
20 happened, so very brief, so they kind of understand why
21 they're talking to me. Most of them understand, but there's
22 some that don't know.

23 Q. And, just to be sure, what is the age range of
24 children that you're speaking to?

1 A. Anywhere from three up to 18. Sometimes I'll
2 talk to older -- younger adults that maybe have some
3 disabilities that they're acting at a younger age and so
4 we'll talk to them as well. But, for the most part, it's
5 three to 18.

6 Q. Three to 18, okay. And you spoke previously
7 about the four phases of the protocol. Do those phases at
8 all change in the way that you interview a child depending on
9 that child's age?

10 A. Sometimes with the younger children I may lead.
11 So, when I lay the guidelines down for the interview, they're
12 called oriented messages. So I may use those throughout the
13 interview with the child instead of up front because I have
14 such a short time with, like, a three or four year old. You
15 know, I can't get them to talk very much or very long. And
16 so those are things that I'll kind of incorporate in to the
17 interview. But majority of the time I do every step with all
18 of the children.

19 Q. I see. Now, are there things, I guess,
20 assessments that you're making about a child as you're
21 talking to a child initially?

22 A. Yes. So we pick a neutral topic to talk about in
23 the beginning of the interview. And I try and mirror the
24 questions that will be asked in the interview so that they

1 understand what types of questions I'll be asking. So, you
2 know, tell me more about that, asking for them to provide
3 details. And so during that time I kind of can assess the
4 types of questions that they can answer, the types of
5 questions they can't, some things I need to be more clear on.
6 It also gives me an idea of how they communicate as well as
7 even just their verbal skills. Some younger children are
8 hard to understand. So I might spend a little more time
9 talking to them so I can get a feel for their language and
10 what words they use for certain things.

11 Q. Now, during the course of these interviews -- Let
12 me strike that and rephrase that.

13 Now, do all interviews, do they end in some sort
14 of disclosure by a child?

15 A. No.

16 Q. Do you have any sort of percentage or number as
17 far as that do not end in disclosure?

18 A. I don't. Nothing that would be accurate.

19 Q. So, on September 4th of 2019, did you interview a
20 HS?

21 A. I did, yes.

22 Q. And what was the purpose of that interview?

23 A. So she was brought to us by detectives in Lyon
24 County. The allegations were that her stepdad was

1 inappropriately touching her.

2 Q. And tell me -- Again, start at the beginning.
3 How did you first learn about the allegations?

4 A. So, for that particular case, I met with the
5 detective prior to the interview. It was just him and I.
6 And it was Detective Messmann, Mike Messmann. And we just
7 went over the allegations. And it was pretty basic. I don't
8 remember the meeting, the exact meeting before that, because
9 it was a year ago and so it's been a while. But, yes, he was
10 brought in with normal law enforcement and we had our meeting
11 and then I went out in to the lobby and got HS and brought
12 her back in.

13 Q. So how did the interview begin with HS?

14 A. So, I did talk to her about the cameras, I talked
15 to her about the team watching us and let her know I would
16 take a break and follow up with the team. And then we talked
17 about a neutral topic. Her -- That day she told me about her
18 morning and what happened from her morning until a certain
19 point. And then I had asked her tell me what you came to
20 talk to me about today. And she had said my stepfather
21 sexually assaulted me.

22 Q. And so she just responded with that blanket --

23 A. Yes.

24 Q. Okay. Did you ask any follow-up questions to

1 that?

2 A. Yes. So I had asked her to tell me, you know,
3 about one incident that she could tell me about her
4 stepfather sexually assaulting her. And she was a little
5 leery in the beginning to use certain phrases and words. But
6 she gave more of a it happened when her mom was at work and
7 he would come in to her bedroom and do that.

8 Q. So you indicate that she was a little leery at
9 first. What gave you that impression?

10 A. Leery in regards to not wanting to use certain
11 words. So, not leery in talking about what happened, but,
12 you know, we have to get certain elements to understand what
13 happened. And there was, you know, certain words she didn't
14 want to talk about. Private parts or --

15 Q. So were you able to follow up with more specifics
16 to your initial question?

17 A. I was, yes.

18 Q. And what specifics, if anything, did she give you
19 on that specific count?

20 A. So she had told me that he fingered her. And I
21 had asked what that meant. And she said that his hand was
22 involved and it went to places it should not have. I had
23 asked her about her clothes. And she was able to tell me
24 that he went under her clothes and on top of her clothes and

1 that his fingers went inside and outside of the part she
2 circled on the diagram. And so she did not want to use the
3 word vagina. And so during that point I had asked her if she
4 could clarify for me and show me on the diagram what part she
5 was talking about. And I showed her a diagram. And it's a
6 diagram that CornerHouse puts out. It's just of a girl that
7 has no clothes on. It's, like, a drawing. And she circled
8 the vagina.

9 Q. And did she -- Well, were you able to determine
10 when that specific incident occurred?

11 A. Yes. She had talked to me about it being her
12 freshman year. She remembered that she had an English
13 teacher named Ms. Miller. I looked back -- or listening to
14 the report again, it sounded like she said Ms. Muller, but --
15 and that she was 13 years old.

16 Q. Okay. During the course of the interview later
17 on was there another time that she indicated this had
18 occurred with specifics?

19 A. Yes. There was another time we talked about in
20 detail about a time that she was watching Twitch. She
21 described it as being a computer game or gaming website on
22 the computer. And that she had left, she went to the
23 bathroom. And then she went in to her bedroom and her
24 stepdad came in to the room and said why aren't you watching

1 this with me anymore. And she had said she didn't want to.
2 And then she indicated that he had fingered her again at that
3 incident too.

4 Q. I mean, did you clarify during the course of the
5 interview what fingering was with her?

6 A. Yes. She had -- like earlier she had said his
7 hand went in places it shouldn't have been. And, so when I
8 was able to ask her where did it go, she had said where it
9 wasn't supposed to. And that's when I presented the diagram
10 to her and for her to -- she circled the vagina. And then I
11 had clarified again later on that -- because she had said it
12 happened again. So I used some clarifying questions asking
13 her did he finger you again. And she had said yes on the
14 circled part.

15 Q. During the time when, the Twitch time, did she
16 tell you how old she was?

17 A. She said it was a few -- two or three months
18 before her 15th birthday.

19 Q. And did she indicate how often these massaging
20 and sexual assaults occurred?

21 A. Yeah. She had indicated to me that it was almost
22 five times a week.

23 MR. MERRILL: Thank you.

24 THE WITNESS: You're welcome.

1 THE COURT: Mr. Kalter.

2 MR. KALTER: Thank you, your Honor.

3 CROSS-EXAMINATION

4 By Mr. Kalter:

5 Q. Good morning, ma'am.

6 A. Good morning.

7 Q. So you work for the Washoe County Child Advocacy

8 Center?

9 A. Correct.

10 Q. Okay. And that was set up by the Washoe County

11 DA's Office?

12 A. The Child Advocacy Center?

13 Q. Correct.

14 A. Correct.

15 Q. Okay. So the Washoe County DA Center has set up

16 the Washoe County Child Advocacy Center, so they have some

17 involvement with how your office runs and things?

18 A. Yeah. They provide the DAs and the funding.

19 Q. Okay. So the Washoe County DA's Office funds the

20 Washoe County Child Advocacy Center. Who provides the

21 funding when it's a referral from Lyon County, if you know?

22 A. I don't know.

23 Q. Fair enough. Okay. So what exactly is the

24 purpose of a forensic interview?

1 A. So, a couple things is that we -- the children
2 are to talk to someone who is forensically trained to working
3 with children. And we also like to make sure that they're
4 only talked to one time and questioned one time so they're
5 not re-traumatized several times every time they have to
6 repeat their story. As well as often times talking to them
7 the first time, they're really able to share those details
8 about things that have happened as opposed to if they were
9 talked to 20 times there could be some inconsistencies as
10 well as lack of details as to when they talked about it the
11 first time.

12 Q. Okay. And the guidelines and how you're trained
13 are set up so as not to lead the child and there's certain
14 parameters you're to follow so that it's more of an accurate
15 interview, there's not suggestibility, things like that?

16 A. Yes, sir.

17 Q. Okay. Why don't you ask the child any, say,
18 exculpatory questions to find out if what she said didn't
19 happen?

20 A. Explain that a little more.

21 Q. Well, why don't you dive in -- So when the child
22 or even HS in this case makes an accusation against someone,
23 how come you didn't ask questions to try and really find out
24 more details about it or if it even holds up logistically?

1 A. I -- So I hope I'm answering this correctly. So
2 my job really is to get them to tell the experience in their
3 own words and to elicit things that happened to them. And so
4 I don't know, like, what types of questions would I be
5 asking?

6 Q. Okay. Sure. So the jury was told that this is a
7 neutral organization that interviews the child and you said
8 that now that the goal is to only have the child interviewed
9 once. I mean, do you ask questions to find out logistically
10 if this accusation makes sense, say, there's family members
11 around, things like that?

12 A. If there's family members present when it
13 happens?

14 Q. Right.

15 A. Like when the acts happen?

16 Q. Right.

17 A. So we discussed who was in the house.

18 Q. In each occasion that she went over with you, you
19 asked who was present and where they were?

20 A. I know we talked about at least two of the
21 occasions she said her brother was there and her mom was
22 working.

23 Q. You never asked her why she didn't try and make
24 him stop; right?

1 A. No. That's not a question I would ask the
2 victim.

3 Q. Okay. You didn't ask her any details whatsoever
4 of the, quote, fingering?

5 A. I felt that I did.

6 Q. How did it make you feel, did it hurt, were you
7 injured?

8 A. I did ask her how did it make you feel.

9 Q. Okay.

10 A. And her response was that it didn't make me feel
11 good.

12 Q. Okay. Did you ask her if it hurt?

13 A. I didn't ask her if it hurt, only because I had
14 asked the follow-up question to that was how did your body
15 feel, and she was not able to describe hurt. And so I
16 wouldn't have went any further to ask if she was hurt because
17 I feel like that would be a leading question.

18 Q. Did you ask her if she sustained any injuries
19 over all of these times of being fingered against her will?

20 A. No.

21 Q. You never explored with her any motive she may
22 have had to make this accusation; correct?

23 A. Correct.

24 Q. You did not?

1 A. No.

2 Q. Okay.

3 Ms. Clerk, may I have Exhibit 18? Thank you.

4 And this has been admitted; correct?

5 THE COURT: Yes, it has previously been admitted
6 by stipulation of counsel.

7 MR. KALTER: May I approach the witness, your
8 Honor?

9 THE COURT: Yes, Mr. Kalter.

10 Q. (By Mr. Kalter) Ms. McCann, I'm showing you
11 what's been marked as Plaintiff's Exhibit 18 and previously
12 admitted. Can you take a look at this and tell me if you're
13 familiar with it?

14 A. I am.

15 Q. Okay. Can you tell the jury what this is?

16 A. This is the anatomical diagram that I talked to
17 HS about.

18 Q. Okay. So tell the jury what this is.

19 A. An anatomical diagram that I had presented to HS
20 to ask where he touched her.

21 Q. Okay. So the interview was September 4th of '19;
22 is that right?

23 A. Yes.

24 Q. Okay. So she's 15 years old at this time?

1 A. Correct.

2 Q. Okay. And you testified you needed to use this
3 diagram to get her to tell you where she was being touched?

4 A. Correct.

5 Q. The rapport-building phase of the forensic
6 interview is to establish some type of bond or trust that
7 they can open up to you and feel comfortable?

8 A. The rapport is developed throughout the
9 interview. I mean, that's part of it. It's also to lay the
10 foundation for them to understand what's coming up in the
11 interview.

12 Q. Right. But the beginning of the interview is
13 pretty much strictly some type of rapport building?

14 A. Yeah.

15 Q. Okay. But in this case HS was unable at 15 years
16 old to say vagina or any other word to describe that part and
17 needed to circle the little diagram?

18 A. Yes.

19 Q. Okay.

20 A. Which is very common for children of her age or
21 younger.

22 Q. During her interview didn't she tell you that she
23 had disclosed to her mom once at 13 and once at 14 that she
24 was sexually assaulted?

1 A. That is not how I understood it, no.

2 Q. How did you understand it?

3 A. That she had made comments that he's doing other
4 things and her mom had said what do you mean, what's going
5 on, and he replied to one of them, don't worry about it,
6 she's throwing a tantrum, and then another similar situation.
7 From my understanding, she did not come out and say that this
8 was happening to her.

9 Q. Okay. HS made it clear to you that she would ask
10 TJ for these massages; correct?

11 A. Yes.

12 Q. So HS said I would ask TJ for the massages?

13 A. Correct.

14 Q. And, as you asked her about the alleged sexual
15 assault occasions, she always told you they happened before
16 bedtime; right?

17 A. Yes.

18 Q. Okay. Not in the morning, not in the afternoon,
19 it was always before bedtime; right?

20 A. Yes.

21 Q. She never told you of any other incidents in
22 which it happened not before bedtime?

23 A. Correct.

24 Q. Okay. And also in your interview -- also in your

1 interview, she said each alleged sexual encounter happened
2 specifically in her bedroom?

3 A. Yes.

4 Q. Okay. Because in fact at one time you even
5 followed up and said did it happen anywhere else and she said
6 no?

7 A. Correct.

8 Q. Okay. And at one time you actually followed up
9 and said, did it happen anywhere else in your room, after
10 establishing it did not happen anywhere else in the house?

11 A. Yes.

12 Q. Okay. So, only in the bedroom, only right before
13 bed. So not on the couch during the day in the living room;
14 right?

15 A. No.

16 Q. Okay. And you specifically asked her if it had
17 happened anywhere else in the house?

18 A. Yes. She did not describe another incident.

19 Q. And she told you in fact that there was no other
20 incident outside of the bedroom?

21 A. Yes.

22 Q. At no time -- Strike that. So, again, the idea
23 of the forensic interview and law enforcement sending the
24 child to your advocacy center is so you have one person

1 interviewing the child; right?

2 A. Yes.

3 Q. Okay. So this is the one time, mainly the one
4 time to get all the details that you can?

5 A. Yes.

6 Q. At no point ever in your interview did you guys
7 get in to the depth of her allegation that he was penetrating
8 her vagina, how far in her vagina; correct?

9 A. That's not usually an element I have to prove.

10 Q. I understand. I just want to know if there was
11 ever any discussion that it was slightly in or all the way
12 in. That was never discussed?

13 A. No. Just his finger went inside of her vagina.

14 Q. Okay. So any notion that it was just slight
15 didn't come from anything you discussed with her?

16 A. No.

17 Q. And you never asked her -- Because she said this
18 would happen five to six times a week for two years; right?

19 A. She had told me almost five times a week.

20 Q. Okay. Five times a week for almost two years.

21 And there was no questions to determine if he nicked her with
22 his fingernail or there was any physical injuries; right?

23 That was never discussed?

24 A. No.

900A

1 MR. KALTER: Okay. Thank you for your time.
2 THE WITNESS: Yes. Thank you.
3 THE COURT: Mr. Merrill?
4 MR. MERRILL: No follow-up, your Honor. Thank
5 you.
6 THE COURT: Okay. Is Ms. McCann subject to
7 recall?
8 MR. MERRILL: Not by the State.
9 MR. KALTER: No, your Honor.
10 THE COURT: All right. Ms. McCann, thank you
11 very much for your testimony. Please don't discuss your
12 testimony until this matter is concluded.
13 THE WITNESS: Absolutely.
14 THE COURT: Thank you.
15 THE WITNESS: Thank you.
16 THE COURT: Okay. Mr. Merrill, next witness.
17 MR. MERRILL: Your Honor, the State rests at this
18 point. We have no further witnesses. Thank you.
19 THE COURT: Okay. Mr. Kalter.
20 MR. KALTER: Our next -- Our first witness is
21 Deputy Greenhunt. Ms. Schumann will be doing the direct of
22 him.
23 THE COURT: Okay. Deputy, please come forward.
24 Face the clerk, raise your right hand, and be sworn.

900 B

1 (The witness was sworn in)

2 THE COURT: Okay. Come on around here and have a

3 seat in the witness chair. Deputy, while you're testifying,

4 you can remove your mask.

5

6 NICHOLAS GREENHUNT

7 Called as a witness on behalf of the

8 Defendant, having been first duly sworn,

9 Was examined and testified as follows:

10

11 DIRECT EXAMINATION

12 By Ms. Schumann:

13 Q. Good morning.

14 A. Good morning.

15 Q. Sir, can you state your name and spell your last

16 name for the record?

17 A. Deputy Nicholas Greenhunt. My last name is

18 G-r-e-e-n-h-u-n-t.

19 Q. And, sir, where are you employed?

20 A. I'm employed with the Lyon County Sheriff's

21 Office.

22 Q. And what position do you hold?

23 A. Deputy sheriff.

24 Q. What training did you have to obtain to become a

900c

1 deputy?

2 A. Standard Nevada POST certification. It's ran
3 through the Peace Officers Standard and Training from the
4 State of Nevada.

5 Q. How long have you been employed with Lyon County
6 Sheriff's Office?

7 A. Seven years in January I will have been a deputy.

8 Q. Have you obtained any additional training?

9 A. We have our yearly training that we do on
10 defensive tactics, mental health training, and stuff like
11 that. But I have no specialized training, no.

12 Q. Now, were you working on July 16th of 2019?

13 A. I was.

14 Q. What shift?

15 A. Day shift down in the Mason Valley.

16 Q. What hours are day shift?

17 A. I believe at the time we were working tens and it
18 was 6:00 to 4:00 p.m., something like that.

19 Q. Now, did you receive a report of an alleged child
20 molestation case?

21 A. I did.

22 Q. What was the report initially?

23 A. The report was that a woman would like to report
24 that her daughter -- that her husband had told her that he

900P

1 was molesting their daughter.

2 Q. Okay. And what address did you go to after you
3 received the call?

4 A. I don't recall. I would have to look at my
5 report.

6 Q. Okay. Well, who was at the house when you
7 arrived?

8 A. When I arrived on scene, Mrs. Bernal was there,
9 along with her friend, I believe her last name was
10 Mrs. Sobato. And the daughter was also home but not present.
11 I didn't speak with her.

12 Q. Okay. The address, 610 US Highway 95A, does that
13 sound right?

14 A. That sounds correct, yes.

15 Q. Now, did you talk to Ms. Bernal about the case?

16 A. Briefly, yes.

17 Q. Okay. Did she tell you how long this was
18 allegedly happening?

19 A. I believe she had originally said about six
20 months. But then after speaking with her daughter, when we
21 were taking a break, she had told me approximately a year.

22 Q. Now, is it fair to say that when Ms. Bernal
23 reported this to you her biggest concern was DCFS getting
24 involved?

900 E

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1 A. I wouldn't say that was her biggest concern, but
2 it was a concern of hers.

3 Q. Okay. But, when you responded to her house, she
4 hadn't obtained a temporary protection order yet; correct?

5 A. That's correct.

6 Q. You told her to obtain one?

7 A. That's correct.

8 Q. And you told her that if she didn't get one CPS
9 would be notified?

10 A. I advised her that that was a possibility, yes.
11 We wanted to protect the child. That was our number one
12 concern at that point.

13 Q. Okay. And Ms. Bernal obviously didn't want you
14 to report it to CPS?

15 A. No.

16 Q. Now, did Patricia tell you this had happened --
17 this had been reported to her prior to July of 2019?

18 A. I believe, yeah, she said that she had spoke with
19 her husband on the 14th and waited to contact us.

20 Q. What about prior to that?

21 A. I'm unaware of any -- of her knowing about it
22 prior to that.

23 Q. Do you remember her telling you that initially
24 that her daughter had disclosed it to her six months prior?

900F

1 A. I don't recall that, no.

2 MS. SCHUMANN: I'll pass the witness, your Honor.

3 THE COURT: Okay.

4 Mr. Merrill.

5 MR. MERRILL: Just briefly, your Honor.

6 CROSS-EXAMINATION

7 By Mr. Merrill:

8 Q. Good morning, Deputy.

9 A. Good morning.

10 Q. Good to see you again. On cases such as these

11 with allegations of sexual assault, is it typical for you to

12 suggest restraining orders?

13 A. Yeah. If the -- one of the parents is not

14 willing to keep the child protected from the alleged

15 offender, then typically we get involved to make sure that

16 the child is safe and no further abuse happens.

17 Q. Okay. Were there any threats that you were going

18 to call CPS or Child Protective Services?

19 A. Not that I recall. It is kind of standard

20 procedure for us to get them involved if we believe there's a

21 threat to the child and if they're not willing to protect the

22 child.

23 MR. MERRILL: Thank you.

24 THE WITNESS: Uh-huh.

9006

1 MS. SCHUMANN: No redirect on that, your Honor.

2 THE COURT: Okay. Thank you Deputy Greenhunt.

3 You're excused from -- Oh, wait.

4 Is he subject to recall?

5 MS. SCHUMANN: No, your Honor.

6 MR. MERRILL: No, your Honor.

7 THE COURT: All right. Thank you for your
8 testimony.

9 Next witness.

10 MR. KALTER: Your Honor, as we previously
11 discussed, we would like to take a break for technology
12 purposes.

13 THE COURT: Okay.

14 MR. KALTER: Thank you.

15 THE COURT: All right. So, Ladies and Gentlemen,
16 we're going to take a little break. We're just going to get
17 set up on some of the tech in here. So, we can do a lot of
18 things in here, have remote testimony and do those kinds of
19 things. So we're going to get some of that stuff all set up.
20 So it will take us about ten minutes to do. We'll take a
21 ten-minute break and then we'll get you back in here.

22 But, in the meantime, during the recess we're
23 about to take, you're admonished that it's your duty not to
24 discuss amongst yourselves or with anyone else any matter

9004

1 having to do with this case. It is your further duty not to
2 form or express any opinion regarding the guilt or innocence
3 of the defendant until the case has been finally submitted to
4 you for decision. You are not to read, view, or listen to
5 any report in the newspaper, radio, television, or the
6 internet concerning this case, nor allow anyone to read or
7 comment upon them to you or in your presence. This includes
8 viewing any type of social media relating to this case.
9 You're not to investigate or attempt to obtain any additional
10 information about this case outside the courtroom. Do not
11 visit the scene or attempt any investigation on your own. Do
12 not peruse the internet in relation to this matter. Do not
13 read any legal text or book regarding any issue raised in
14 court. Should any person attempt to discuss the case with
15 you or in any manner attempt to influence you with respect to
16 it, you are to advise the bailiff who will in turn advise the
17 Court and I will take care of it. We'll take a break.

18 (Recess was taken)

19 THE COURT: Okay. I'm confused. I thought we
20 were just going to set up the Zoom.

21 MS. SCHUMANN: Your Honor, I'm just going to call
22 them to have them hook in to the system just to join in to
23 the Zoom, and then we can just call them one at a time.

24 THE COURT: Who?

900I

1 MS. SCHUMANN: There's two. Larson Lelund and
2 Marlene Nish.

3 THE COURT: Oh, okay. Those are the witnesses
4 you're going to call?

5 MS. SCHUMANN: Yes.

6 THE COURT: All right. I got confused. I
7 thought Mr. Kalter said he was going to call Dr. Davis. I
8 thought that's what he said he was going to do next. That's
9 fine. No, no, no, no. I got confused there for a minute.
10 To take ten minutes and make sure we get it set up.

11 MS. SCHUMANN: Okay. Thank you very much.

12 THE COURT: And then we can put one in the
13 waiting room or whatever.

14 MS. SCHUMANN: Sounds good.

15 THE COURT: All right. Thank you.

16 (Recess was taken)

17 THE COURT: Okay. I just want to make sure
18 everybody understands the rules of the remote testimony,
19 okay. I just want to make sure that it runs exactly like it
20 does in court. That means, Ms. Nish, you got to be aware of
21 a couple of rules, okay. And one of those rules is --

22 THE WITNESS: Okay.

23 THE COURT: One of those rules is if there is an
24 objection, you need to stop speaking, okay.

1 THE WITNESS: Okay.

2 THE COURT: Do you understand?

3 THE WITNESS: Yeah.

4 THE COURT: And then we'll go from there with the
5 testimony. And are we ready for the jury? Anything else to
6 bring up?

7 MS. SCHUMANN: Your Honor, do you want me to ask
8 questions from the podium or from the --

9 THE COURT: You can ask --

10 MS. SCHUMANN: Wherever? Okay.

11 THE COURT: Yeah. I mean, that's up to you.

12 MS. SCHUMANN: Okay.

13 THE COURT: I would prefer that you stand.

14 MS. SCHUMANN: Okay.

15 THE COURT: We're in the middle of a jury trial.

16 MS. SCHUMANN: Right.

17 THE COURT: Okay. All right. So bring them in.
18 Counsel stipulate to the presence of the jury?

19 MR. MERRILL: Yes, Judge.

20 MS. SCHUMANN: Yes, your Honor.

21 THE COURT: Okay. All right. So, first of all,
22 Ms. Nish, I need you to raise your right hand and be sworn by
23 the clerk.

24 (The witness was sworn in)

1 THE COURT: Go ahead, Ms. Schumann.

2 MS. SCHUMANN: Thank you, your Honor.

3

4 MARLENE NISH

5 Called as a witness on behalf of the
6 Defendant, having been first duly sworn,
7 Was examined and testified as follows:

8

9 DIRECT EXAMINATION

10 By Ms. Schumann:

11 Q. Ms. Nish, can you hear me okay?

12 A. Yes. Can you hear me?

13 Q. Yes. Okay. Ma'am, can you state your name and
14 spell your last name for the record.

15 A. Marlene Nish, N, as in Nancy, i-s-h.

16 (The court reporter interrupts)

17 MS. SCHUMANN: Marlene, M-a-r-l-e-n-e.

18 Q. (By Ms. Schumann) Okay. I'm going to slow down.
19 There's a little bit of a delay, but we'll work it out.

20 Ma'am, what do you do for a living?

21 A. I'm a cosmetologist.

22 Q. Where do you live?

23 A. Las Vegas, Nevada.

24 Q. And how do you know TJ Bernal?

1 A. He's been my best friend since high school.
2 Q. Now, did you live with TJ at one point?
3 A. Yes.
4 Q. How long did you live with him?
5 A. About two and a half years.
6 Q. And was that approximately January of 2016 to
7 August of '18?
8 A. Yes.
9 Q. At which house did you reside with TJ?
10 A. 610 Highway 95A East, Yerington, Nevada.
11 Q. And what was the living arrangement when you
12 lived with him?
13 A. The family was inside the house and I was in the
14 add-on. TJ, Patty, HS, and OS were in the house, and I was
15 in the add-on.
16 Q. Okay. Did you see TJ almost every day when you
17 lived there?
18 A. Yeah, I saw them all every day.
19 Q. Okay. Did you eat dinner with them every day?
20 A. Pretty much, yes.
21 Q. Were you working when you lived with TJ during
22 that time?
23 A. I was. I worked for Pioneer Crossing Casino.
24 Q. And what was your work schedule like?

1 A. The beginning I was working in the cage, so it
2 was about five days a week. But then I moved to the pit as a
3 blackjack dealer and I was two days a week.

4 Q. Now, during the time that you lived in the house,
5 did you observe HS and TJ interact?

6 A. Yes. Yes.

7 Q. What kind of relationship did they have?

8 A. It seemed father-daughter to me.

9 Q. How would they interact?

10 A. Just teasing each other, joking, things like
11 that.

12 Q. Okay. So when you moved out of the house did you
13 visit TJ at the house after you moved out?

14 A. Yeah. I went over about once a week for a couple
15 of months to pick up my mail and catch up.

16 Q. And did it seem to you during the time you lived
17 at the house that TJ was the primary disciplinarian?

18 A. I always referred it to TJ being the bark and
19 Patty being the bite. So they were both disciplinarians.

20 Q. So, when Patty wasn't there, would TJ discipline
21 the kids?

22 A. Yeah. He would send them to their room or take
23 away their electronics.

24 Q. So did you see TJ discipline HS?

1 A. Yes.

2 Q. What would he discipline her for?

3 A. Just being a typical teenage girl, not doing her
4 homework, not listening, not doing her chores.

5 Q. Now, what was HS's reaction when TJ would
6 discipline her?

7 A. Typical teenage girl, throw a fit, huff, slam a
8 door.

9 Q. Now, did you ever see or hear HS ask TJ to rub
10 her with CBD oil?

11 A. Yes.

12 Q. Did the kids go straight to the Boys and Girls
13 Club after school or did they go to the house?

14 A. The majority they went to the Boys and Girls
15 Club.

16 Q. Now, did you see anything unusual between TJ and
17 HS?

18 A. No, I did not.

19 MS. SCHUMANN: I'll pass the witness, your Honor.

20 THE COURT: Okay. Mr. Merrill, do you have any
21 questions?

22 MR. MERRILL: Just briefly, your Honor.

23 THE COURT: And, Ms. Nish, if you could just slow
24 down your speech just a little bit. Because sometimes your

1 words are kind of going over each other, okay. Just slow
2 down when you're speaking, okay.

3 THE WITNESS: Okay.

4 THE COURT: All right. Go ahead, Mr. Merrill.

5 CROSS-EXAMINATION

6 By Mr. Merrill:

7 Q. Good morning, Ms. Nish.

8 A. Good morning.

9 Q. My name is Matthew Merrill. I work for the
10 district attorney's office. I'm just going to ask you a few
11 follow-up questions.

12 A. Okay.

13 Q. So you resided at the 610 95A Highway house for
14 approximately two years?

15 A. Correct.

16 Q. And you left that address prior to August of
17 2018; is that correct?

18 A. I think it was August of 2018, because it was
19 just as I was starting my new job at Zulily.

20 Q. So, was that at the beginning of the month or the
21 end of the month of August, if you recall?

22 A. The beginning, I believe.

23 Q. Where do you -- Where did you move to?

24 A. In town, 23 South Center Street.

1 Q. Okay. And that was in Yerington still?

2 A. Correct.

3 Q. And then you indicated for a couple of months you

4 would go by once a week by the house?

5 A. Correct. I needed to pick up my mail and then

6 catch up with my best friend and see how it was going.

7 Q. And, during the time that you lived there at the

8 house at 610 95A, did you ever go in to HS's bedroom?

9 A. Yes.

10 Q. Okay. And how often of an occurrence was that?

11 A. Not very often. More just to go see the turtle

12 that I got her.

13 Q. And you never saw any -- Well, let me rephrase

14 that. Did you actually ever see the defendant rub oil on HS?

15 A. I did.

16 Q. And where did that occur?

17 (The court reporter interrupts)

18 Q. Can you rephrase what -- Can you repeat what you

19 just said.

20 A. The bedroom door was always open when that

21 happened.

22 Q. And the rubbing of the oil would happen in HS's

23 bedroom?

24 A. Sometimes. Sometimes in the living room.

1 MR. MERRILL: Thank you, Ms. Nish.
2 THE WITNESS: You're welcome.
3 MS. SCHUMANN: Nothing further, your Honor.
4 THE COURT: Okay. Thank you, Ms. Nish. You're
5 excused. You can leave the conference.
6 THE WITNESS: Thank you.
7 THE COURT: Next witness.
8 MS. SCHUMANN: Your Honor, our next witness is
9 Larson Lelund.
10 THE COURT: All right. Let's bring him up.
11 MS. SCHUMANN: Mr. Lelund, can you hear me?
12 THE WITNESS: Yes.
13 THE COURT: So you're highlighted there.
14 THE LAW CLERK: My sound and everything is off.
15 THE COURT: Because there's a green line around
16 your --
17 THE LAW CLERK: There. No. Okay. If you go to
18 gallery view, that would just be better.
19 MS. SCHUMANN: Okay. Sir, can you please say
20 your name and spell it.
21 THE COURT: Wait.
22 MS. SCHUMANN: Oh, sorry.
23 THE COURT: We don't have a witness that's not
24 sworn to testify to the truth.

1 MS. SCHUMANN: Oh, I apologize.

2 THE COURT: Okay. All right. Okay. So,
3 Mr. Lelund, raise your right hand and be sworn by the court
4 clerk, please.

5 (The witness was sworn in)

6 THE COURT: Okay. Now you may proceed,
7 Ms. Schumann.

8 MS. SCHUMANN: Thank you, your Honor.

9
10 LARSON LELUND

11 Called as a witness on behalf of the
12 Defendant, having been first duly sworn,
13 Was examined and testified as follows:

14
15 DIRECT EXAMINATION

16 By Ms. Schumann:

17 Q. Sir, can you state your name and spell your last
18 name for the record.

19 A. My name is Larson Lelund, L-a-r-s-o-n
20 L-e-l-u-n-d.

21 Q. And, sir, what do you do for a living?

22 A. I'm a writer.

23 Q. Where do you reside?

24 A. I'm currently in Gates, New York.

1 Q. Now, do you know TJ Bernal?

2 A. Yes, I do.

3 Q. How do you know TJ?

4 A. We met around 2005, 2006 playing a game on line.

5 Q. And would you consider him a friend of yours?

6 A. Yes. After the years and all the hours that we

7 spent together, yes.

8 Q. Now, at one point did you live with TJ?

9 A. Yes, I did. I was there from February 2017

10 through roughly May.

11 Q. Of the same year, sir?

12 A. Yes. Of 2017.

13 Q. Okay. And what was the address of that house?

14 A. 610 US Highway 95, about eight minutes outside of

15 Yerington.

16 Q. What was the living arrangement when you lived

17 with TJ?

18 A. Patty and TJ had the master bedroom off the

19 left-hand side of the entrance. Marlene had a bedroom in the

20 basement area next to the storage area where I was. HS and

21 OS were upstairs on the right-hand side just past the

22 bathroom and the living room.

23 Q. Could you hear what was going on at the other end

24 of the house?

1 A. If you were in the living room, yes, between the
2 fish tank and the water cooler. But, once you got past,
3 like, the laundry room, it was a little bit more muffled down
4 there.

5 Q. Now, were you working when you lived with TJ?

6 A. Yes. I was substituting for Lyon County School
7 District at the time.

8 Q. And how many days a week were you working?

9 A. Four at the start before I got hired on full time
10 in Dayton.

11 Q. During the time that you lived at the house did
12 you observe HS and TJ interact?

13 A. Yes, I did.

14 Q. How often would you see them interact?

15 A. Daily. They all lived together.

16 Q. How would you describe their relationship?

17 A. It was a father/daughter kind of relationship. I
18 mean, TJ would help the kids when they got home from the Boys
19 and Girls Club and, you know, he would help them with their
20 school work, get them set up with whatever game that they
21 were playing. You know, it was a warm relationship.

22 Q. Now, was an adult other than TJ usually at the
23 house during the time that you lived there?

24 A. Yes. Patty worked the late shift. So she was

1 usually up by about two or three or so. And Marlene was
2 usually in the house and we all kind of kept a little bit of
3 a different shift.

4 Q. Was TJ protective over the children?

5 A. Oh, most certainly. He made sure that, like, you
6 know, the kids were, you know, where they were supposed to be
7 at the Boys and Girls Club. If there was an issue with
8 school, he made sure that the kids were keeping up on the
9 school work, the report cards, that kind of stuff.

10 Q. Did it seem to you during the time that you lived
11 at the house that TJ was the primary disciplinarian of the
12 kids?

13 A. Yes, he was. Disciplinary -- He would thoroughly
14 explain everything, but he did it in a respectful, stern kind
15 of manner. So he made sure that the kids knew exactly what
16 was, you know, the position why he was explaining why they
17 had to do their chores and clean up, vacuum with the cats,
18 that kind of stuff.

19 Q. Okay. Did you ever see TJ discipline HS?

20 A. Only verbally.

21 Q. Okay. What kinds of things would TJ ask HS to
22 do?

23 A. Vacuum around the cats, you know, the coffee
24 table, pick up her room, eat dinner, you know, light kind of

1 stuff. There was never anything really involved. Nothing
2 unreasonable either.

3 Q. What was HS's reaction to being disciplined by
4 TJ?

5 A. If it was, say, in the middle of a game or if it
6 was, you know, she was watching a video on the tablet or
7 something like that, she would pout or sit on the couch or
8 run off to her room and shut the door.

9 Q. Now, while you lived at the house, did you see
10 anything unusual between HS and TJ?

11 A. No, not at all.

12 MS. SCHUMANN: Okay. I'll pass the witness, your
13 Honor.

14 THE COURT: All right. Hold on, Mr. Lelund.

15 Mr. Merrill, do you have any questions?

16 MR. MERRILL: Just briefly, your Honor.

17 CROSS-EXAMINATION

18 By Mr. Merrill:

19 Q. Good morning, Mr. Lelund.

20 A. Good morning.

21 Q. My name is Matthew Merrill and I work for the
22 district attorney's office. I'm just going to ask you a
23 couple of follow-up questions.

24 A. Sure.

1 Q. So you indicated that you lived at that 610
2 address between February of 2017 and May of 2017?

3 A. Yes.

4 Q. You indicated that you saw HS and TJ interact a
5 few times; is that correct?

6 A. Yes.

7 Q. And even TJ discipline HS; is that correct?

8 A. Yes.

9 Q. Now, I'm assuming you were a teenager once? Yes?

10 A. That's a loaded question, but, yeah.

11 Q. Okay. Was HS's response a typical teenager?

12 A. Yeah, I would probably say that it was.

13 MR. MERRILL: Thank you, sir.

14 MS. SCHUMANN: Nothing on that, your Honor.

15 THE COURT: Okay. Thank you, Mr. Lelund. You
16 can leave the conference now, sir.

17 THE WITNESS: Okay. Thank you.

18 THE COURT: Next witness.

19 MS. SCHUMANN: Your Honor, our next witness is
20 Teresa Bachler.

21 THE COURT: Please come forward, ma'am. You can
22 face the clerk and raise your right -- Wait. Stop. Listen
23 to me, not to her, okay. Raise your right hand, face the
24 clerk, and be sworn.

1 (The witness was sworn in)

2 THE COURT: Okay. So, Ms. Bachler, please come

3 around here and have a seat in the witness chair.

4 Okay, Ms. Schumann, go ahead.

5 MS. SCHUMANN: Thank you, your Honor.

6 THE WITNESS: Can I take this off now?

7 MS. SCHUMANN: Yes.

8

9 TERESA BACHLER

10 Called as a witness on behalf of the

11 Defendant, having been first duly sworn,

12 Was examined and testified as follows:

13

14 DIRECT EXAMINATION

15 By Ms. Schumann:

16 Q. Ma'am, can you state your name and spell your

17 last name for the record?

18 A. Teresa Bachler, B-a-c-h-l-e-r.

19 Q. And, ma'am, what do you do for a living?

20 A. I'm retired.

21 Q. What are you retired from?

22 A. Medical assistant 17 years.

23 Q. How do you know TJ Bernal?

24 A. He is my nephew and I've known him since he was

1 born.

2 Q. How close are you to TJ?

3 A. Fairly close. Close enough where I watched him
4 take care of his mom that was dying of cancer for a year.

5 Q. Now, how did you hear about the accusations
6 against TJ?

7 A. From his brother Chris.

8 Q. And what day did you learn about the accusations?

9 A. On about July 14th, 2019.

10 Q. And was that the day that TJ left the house?

11 A. Yes, I believe so.

12 Q. What did you do after you heard the accusations?

13 A. I went to TJ's house and talked to Patty and HS.

14 Q. Okay. And what was the address of that house?

15 A. On 95.

16 Q. 610 Highway 95 East?

17 A. Yeah. I don't know what --

18 Q. Okay.

19 A. Yeah, it was 610.

20 Q. What time of day did you go to TJ's house?

21 A. In the evening.

22 Q. Do you know approximately what time?

23 A. I don't know. Six. Six-ish. I don't know.

24 Q. About six, okay. Now, you said you had contact

1 with Patty and HS at the house?

2 A. Yes, ma'am.

3 Q. Okay. What contact was that?

4 A. I went inside the house and went in and when I

5 got inside HS was in there trying to delete all of TJ's video

6 games and things off of his and playing video games,

7 laughing, having a -- you know, enjoying herself.

8 Q. So she wasn't upset or crying or anything like

9 that?

10 A. No, not at all.

11 Q. What was Patricia's demeanor?

12 A. She seemed a little upset. We went in to her

13 room. And, when we got in to her room, we sat on her bed and

14 she flopped back and said now I get this name brand bed,

15 whatever the name brand was. But now I get this name

16 brand --

17 MR. MERRILL: Objection. Hearsay.

18 THE WITNESS: -- bed to --

19 THE COURT: All right. Stop.

20 MS. SCHUMANN: Your Honor, I'll rephrase.

21 THE COURT: All right. Disregard that comment.

22 It's hearsay. Go ahead, Ms. Schumann.

23 MS. SCHUMANN: Thank you, your Honor.

24 Q. (By Ms. Schumann) So, without saying what she

1 said, what was her demeanor?

2 A. Not really upset or anything.

3 Q. Okay. Did she seem relieved that TJ was out of
4 the house?

5 A. Yes.

6 Q. Did you expect Patricia to be more upset?

7 A. Yes, by all means.

8 Q. Now, how often did you see HS around TJ before HS
9 made these accusations?

10 A. Like once a month or once every two months and
11 every Thanksgiving.

12 Q. And during Thanksgiving did TJ have the kids with
13 him?

14 A. Yes, he did.

15 Q. What kind of relationship did TJ have with HS and
16 OS?

17 A. Like a father relationship. I mean, he
18 disciplined them if he needed it or he was just there when
19 they needed him. You know, the whole family was there, and
20 he was there as a father.

21 Q. So Patty was there too?

22 A. Yes.

23 Q. Did you witness anything out of the ordinary with
24 TJ and HS's relationship?

1 A. No, nothing.

2 MS. SCHUMANN: No further questions, your Honor.

3 THE COURT: Thank you, Ms. Schumann.

4 Mr. Merrill, do you have any questions?

5 MR. MERRILL: Just briefly.

6 CROSS-EXAMINATION

7 By Mr. Merrill:

8 Q. Good morning, Ms. Bachler.

9 A. Good morning.

10 Q. My name is Matthew Merrill and I'm with the

11 district attorney's office. I'll just ask you a few

12 follow-up questions.

13 A. Okay.

14 Q. You indicated on direct that you saw TJ and the

15 kids once every two months; is that correct?

16 A. Once a month or every two months, something like

17 that, yeah.

18 Q. And did that typically happen at your house?

19 A. Their house or my house, yes.

20 Q. Okay. Either one?

21 A. Yes.

22 Q. Okay. And how long did those visits last for?

23 A. I don't know. Half an hour, 45 minutes

24 sometimes.

1 Q. Okay. Did you ever attend any of HS's or OS's
2 school activities?

3 A. I did see OS several times in the band at
4 Christmas.

5 Q. Now, so you saw the children about once every
6 month, you just indicated; right?

7 A. Yes.

8 Q. Did you ever speak to HS personally by herself?

9 A. Yeah.

10 Q. Okay. And how would you describe your
11 relationship with HS?

12 A. Good. I mean, at one point, their school bus
13 broke down on the corner of our house and she told the school
14 bus driver, I'm going to my Aunt Terry's so she will take me
15 home. And she did. She knocked on our door, her and OS, and
16 said the bus was broke down and I took them home, we called
17 Patty and we took them home.

18 Q. How close did you live to them?

19 A. About a mile.

20 Q. Now, did you have an interview with Justin Olsen?

21 A. Yes.

22 Q. Okay. And that was recorded; correct?

23 A. Yes.

24 Q. And Justin Olsen, he's the investigator for the

1 defense?

2 A. Correct.

3 Q. Do you recall making this statement to Justin
4 Olsen, speaking about the kids, you state not knowing them,
5 like, real well knowing them, I mean, like, we did not go
6 visit them or visit them or anything. Did you make that
7 statement to Justin?

8 A. Not that I'm aware of.

9 MR. MERRILL: Okay. Thank you.

10 THE COURT: Anything further, Ms. Schumann?

11 MS. SCHUMANN: No, your Honor.

12 THE COURT: Thank you, Ms. Bachler. Thank you
13 for your testimony.

14 MR. KALTER: May we approach, your Honor?

15 THE COURT: Sure.

16 (Discussion was held at the bench but not reported)

17 THE COURT: Okay. Ladies and Gentlemen, we need
18 to take another quick break. This one should be relatively
19 short. But we're at 10:30 and I would imagine that the next
20 witness is going to take a little while. So I'm going to
21 give you our mid-morning break, how is that? 15 minutes this
22 time, okay.

23 But, before you go, during the recess we're about
24 to take, you're admonished that it is your duty not to

1 discuss amongst yourselves or with anyone else any matter
2 having to do with this case. It is your further duty not to
3 form or express any opinion regarding the guilt or innocence
4 of the defendant before the case has been finally submitted
5 to you for decision. You're not to read, view, or listen to
6 any report in the newspaper, radio, television, or the
7 internet concerning this case nor allow anyone to read or
8 comment upon them to you or in your presence. This includes
9 viewing any type of social media relating to this case. You
10 are not to investigate or attempt to obtain any additional
11 information about this case outside the courtroom. Do not
12 visit the scene or attempt any investigation on your own. Do
13 not do any internet searches related to any events in this
14 matter. Do not read any legal text or book regarding any
15 issue raised in court. Should any person attempt to discuss
16 the case with you or in any manner attempt to influence you
17 with respect it, please notify the bailiff, who will notify
18 the Court and I will take care of it. Take 15 minutes.

19 Okay. So Mr. Kalter has just informed the Court
20 that, Mr. Bernal, you intend to testify; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Before you testify, I want to
23 admonish you that, first of all, you have a constitutional
24 privilege against self incrimination, which means you cannot

1 be compelled to testify. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you have the
4 right to avail yourself of that privilege and not testify in
5 these proceedings at all. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If you decide not to testify, no
8 inference can be drawn from the fact that you remain silent,
9 and I would instruct the jury in that manner if you so
10 request. Do you understand that?

11 THE DEFENDANT: Is that like pleading the fifth
12 on the movies?

13 THE COURT: It is. But, if you choose to
14 testify, you will not have that privilege any longer. Do you
15 understand that?

16 THE DEFENDANT: Okay. Yes.

17 THE COURT: You also have the right to waive that
18 privilege if you want to testify in this matter. But I have
19 to make sure you do that freely with full understanding and
20 without any types of coercion. Has anybody compelled you to
21 testify here today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you understand that if you do
24 testify you will be subject to cross-examination by the

1 State, do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You will not be able to assert your
4 constitutional privilege against self incrimination if you
5 choose to testify. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you going to testify of your own
8 free will after consulting with your counsel?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Fair enough. With all of that
11 being said, we'll take ten minutes for you guys and you can
12 start off with Mr. Bernal's testimony.

13 MR. KALTER: Thank you.

14 THE COURT: Okay. Thank you.

15 (Recess was taken)

16 THE COURT: All right. So, just, Ms. Bachler is
17 not subject to -- I didn't ask -- is not subject to recall;
18 is that correct?

19 MR. MERRILL: Not by the State.

20 MS. SCHUMANN: No, your Honor.

21 MR. KALTER: No, your Honor. And we can also put
22 on the record that we subpoenaed OS and we can release him
23 from his subpoena at this point.

24 THE COURT: Okay. So OS is released as well.

1 All right. So I just want to make sure she's not subject to
2 recall before she's --

3 MR. KALTER: Right. And I notified Mr. Merrill
4 that she's in here too.

5 THE COURT: Yeah, that's fine. As long as she's
6 not subject to recall, that's fine. All right. Simple
7 rules, okay. I just want to make sure we understand, okay.
8 When witnesses start, the Court is in charge, the Court puts
9 them under oath, the Court tells them what to do, where to
10 go. The bailiffs tell them what to do and where to go, okay.
11 I don't want to get in a position where I'm having to have to
12 be assertive to either side of the case, okay. Fair enough?
13 Okay. That was kind of, like, two witnesses in a row and it
14 kind of -- And I know I was pretty abrupt. But let's just
15 keep it within the Court's decorum. You've both tried cases
16 in front of me. You understand that I know what I'm doing, I
17 think, okay.

18 MR. KALTER: Okay.

19 THE COURT: All right. So -- And it is still
20 your intention to put on the defendant first?

21 MR. KALTER: Yes, sir.

22 THE COURT: Okay. So anything else to bring up
23 before the Court?

24 MR. MERRILL: No, Judge.

1 MR. KALTER: Nope.

2 THE COURT: All right. So bring in the jurors.

3 Do the parties stipulate to the presence of the

4 jury?

5 MR. MERRILL: Yes, Judge.

6 MR. KALTER: Yes.

7 THE COURT: Okay. Mr. Kalter, please call your

8 next witness.

9 MR. KALTER: The defense calls Thomas Bernal.

10 THE COURT: Okay. Mr. Bernal, if you would stand

11 and raise your right hand and be sworn by the clerk.

12 (The witness was sworn in)

13 THE COURT: Okay. Mr. Bernal, come on around

14 here. Have a seat in the witness chair.

15 Okay. Mr. Kalter, your witness.

16 MR. KALTER: Thank you.

17

18 THOMAS BERNAL

19 Called as a witness on behalf of the

20 State, having been first duly sworn,

21 Was examined and testified as follows:

22 ///

23 ///

24 ///

DIRECT EXAMINATION

By Mr. Kalter:

Q. Sir, can you please state your full legal name and spell your last name for the court reporter?

A. Thomas Jason Bernal, B-e-r-n-a-l.

Q. Thank you, Mr. Bernal. Have you lived in Yerington before?

A. 22 years.

Q. Okay. When did you move to Yerington?

A. '97.

Q. '97, okay. And how old are you?

A. I am 38.

Q. Okay. So did you do high school in Yerington?

A. Yes, sir.

Q. Did you graduate from Yerington High School?

A. Yes, sir.

Q. Okay. How do you know Patricia Bernal?

A. We met through a mutual friend, her ex, Ryan.

Q. Okay. Speak up just a little bit, okay.

A. Okay.

Q. What year did you meet Patricia?

A. It was probably 2011.

Q. Okay. And did it turn in to a romantic relationship?

1 A. Yes, sir.

2 Q. Did Patricia have -- Does Patricia have children?

3 A. Yes. Two. OS and HS.

4 Q. Speak up just a little louder, okay.

5 A. A little louder, okay.

6 Q. Did she have custody of the children when you met

7 her?

8 A. No.

9 Q. Okay. Where did you -- You guys ended up living

10 together?

11 A. Yes.

12 Q. Okay. Where was that?

13 A. 145 4th Avenue up in Mason.

14 Q. In Mason. And did she have -- did she not have

15 the kids at that point?

16 A. Not at that time, no.

17 Q. Okay. At some point did she retain custody --

18 regain custody of her children?

19 A. Late 2014, early 2015.

20 Q. Okay. And when that happened did they move in

21 with you and Patricia?

22 A. Yes, they did.

23 Q. Okay. When did you and Patricia get married?

24 A. That would be October 3rd, 2015.

1 Q. October 3rd, 2015, okay. And when did you move
2 to the house at 610 95A?

3 A. The end of December 2015.

4 Q. Okay. And did OS and HS move in with you guys?

5 A. Yes.

6 Q. Or I guess move with you?

7 A. That's why we got the house so that they could
8 have their separate rooms.

9 Q. Okay. Did they have to have the same room back
10 at the Mason house?

11 A. Yes. It was only a two-bedroom.

12 Q. Okay. So how did the kids adjust when they first
13 moved in with mom and their new stepfather?

14 A. Pretty rocky to start with. They hadn't been in
15 their mother's custody for quite a few years. And then the
16 adjustment with having a new stepfather was a bit rocky.

17 Q. Okay. What types of things made it rocky?

18 A. Rebellious, saying no all the time, not living --
19 I want to say -- Trust issues would be a better idea on that.

20 Q. Okay. What types of chores did the kids have?

21 A. Just basic things like dishes, cat boxes. We had
22 quite a few cats at the time. Sweep, mop, clean their
23 bathroom. They had their own separate bathroom at the time.

24 Q. Okay. And that was in the new house?

1 A. At the old house and the new house they both had
2 the same -- their own bathrooms.

3 Q. Oh, okay. Now, if they did not do what they were
4 supposed to do as far as chores then how would you and Patty
5 handle that?

6 A. Corner, time-outs type of thing, grounded to
7 their rooms.

8 Q. Okay. We heard from HS that she -- video games
9 are everything. Would you guys --

10 A. Yes.

11 Q. What?

12 A. We had multiple PlayStation boards. At one time
13 we had three so we could all play at the same time. That was
14 after we moved in to the new house.

15 Q. Okay. Did you guys take those away if they
16 didn't do what their --

17 A. Yes. That resulted in the grounding.

18 Q. Patty when she testified said that there was
19 sometimes issues with HS not doing the dishes?

20 A. Yes.

21 Q. Do you recall that?

22 A. Yes. On an often basis. Her dishes were
23 supposed to be done before dinner every evening after
24 homework.

1 Q. Okay. So when you got married to Patty were
2 you -- were you working?

3 A. Yes.

4 Q. What were you doing?

5 A. I was at Maverick Finance doing loans and taxes.

6 Q. Okay. And how long did you work there?

7 A. Four years. From 2014 to 2018.

8 Q. Okay. And what happened in 2018 with the job?

9 A. Patty and I had previously discussed a dream of
10 mine to stream for a living for an income.

11 Q. What does stream mean?

12 A. Stream meaning just like we were doing with the
13 other witnesses, stream video to an on-line audience.

14 Q. Okay. Okay. And where was Patty working?

15 A. She was at Dini's at the time.

16 Q. Okay. What was her typical hours?

17 A. She had two days where she worked swing shift --
18 or three days when she worked swing shift and two days where
19 she had days, which was nine to five. The swing shift
20 consisted of five to one I believe it was.

21 Q. One in the morning?

22 A. Yes.

23 Q. So I want to take your attention to the summer of
24 2018. What grade was HS going in to?

1 A. She was about to be a freshman.

2 Q. Okay. And can you describe kind of her
3 relationship with you as well as Patty as she was entering
4 her freshman year?

5 A. We had gotten her a cell phone during that period
6 of time for her birthday. After that it was a bit rocky
7 because during punishments I would take away her cell phone
8 at the time. We also had a tablet over that summer. We had
9 gotten it with taxes earlier that year. That would also be
10 taken away. So it just ended up fights.

11 Q. Okay. We just prior to the break heard testimony
12 from Ms. Nish and Mr. Lelund. Can you describe where they
13 were living in the house when they each lived there when they
14 did?

15 A. Yes. In those pictures it looks like they were
16 taken from the front door area, the ones that were showing
17 the living room. If you go just to the left in to the
18 kitchen, it leads to the laundry room, which then leads out
19 to what used to be the back door where the extension on the
20 house was. There were two separate rooms back there where
21 they were both staying.

22 Q. Okay. HS testified that no one else lived at
23 that house other than OS, Patty, and you. Is there any
24 possibility that she didn't have interaction with these

1 people in this house?

2 A. No possibility.

3 Q. So what was going on with HS and this book bag
4 and the sore legs?

5 A. During her freshman year she was assigned a lot
6 more books and she didn't want to use her locker, so she
7 carried her books with her on a constant. She would
8 constantly come home complaining of knee pain.

9 Q. Okay. And in terms of her freshman year did that
10 begin immediately or did it take time?

11 A. No. She was -- She was growing over that summer,
12 so it had started previously with the knee pain. But it got
13 worse when she hit her freshman year because of so many books
14 in the backpack.

15 Q. Okay. So there was some issues prior to high
16 school?

17 A. Yeah.

18 Q. Okay. We've heard a lot about massaging. And so
19 let -- Who would you massage in the house?

20 A. Patty.

21 Q. Tell us -- Let's start with her. Tell us about
22 that.

23 A. Patty has lower back issues as well as hip
24 issues. We had gone to the doctor previously and learned she

1 had hip dysplasia at one point, so I would rub her down
2 before work almost every day.

3 Q. Okay.

4 A. Sometimes her lower back when she got home.

5 Q. And how about OS?

6 A. OS had a shoulder issue on his right side because
7 he always used his backpack and swung it over his right side.
8 Even though he's left-handed, he would always throw it over
9 his right side. He ended up having soreness on the back
10 where the wing meets the right next to the spine, so I would
11 rub it on there.

12 Q. Would HS ask you to rub this cream on her?

13 A. Yes.

14 Q. Okay. Tell us about that.

15 A. Most of the time it was I want to say about once
16 to twice a week where she would actually ask me. Most of the
17 time it rotated around PE because that was the extra amount
18 of running and et cetera when her knees were already hurting.

19 Q. Gym class?

20 A. Yes.

21 Q. So where would you apply the lotion?

22 A. Just above the knee and down to the calf.

23 Q. Okay. Were there times that you would apply it
24 farther up the leg?

1 A. Only when she complained of pain, yes.

2 Q. Okay. So where would you apply it in those?

3 A. Up the hip on the outside.

4 Q. The outside of the leg?

5 A. Yes.

6 Q. And did you -- did you put it there without her

7 asking it to be put there --

8 A. No.

9 Q. -- or how would that work?

10 A. Only when she asked.

11 Q. Okay.

12 A. Or she had complained of it being that high.

13 Q. Okay. So how did you come up with this, I don't

14 know, idea to rub your family members when they were in pain

15 as opposed to giving them Advil or something?

16 A. That was also a recommendation on a normal basis

17 was Advil or a hot bath or hot shower.

18 Q. Okay.

19 A. Things that would relax the muscles. But,

20 initially, it came about because of Patty's issue as well as

21 my own. I have two disks that are going out in the base of

22 my neck, C5 and 6, from an accident when I was little. It

23 also flared up one summer when I had a quad flip over on me.

24 Q. Okay. I want to fast forward in the freshman

1 year a little bit to January of 2019.

2 A. Okay.

3 Q. Did HS get in trouble with the school around that

4 time?

5 A. She did.

6 Q. Okay. And did that involve her and her

7 boyfriend?

8 A. Yes.

9 Q. Okay. Something with under the bleachers?

10 A. Yes, sir.

11 Q. Okay. What was her boyfriend's first name?

12 A. CJ.

13 Q. Okay. How did you come to learn that she was in

14 trouble?

15 A. We got a call from the, I believe it was the

16 principal's secretary. It might have been the principal.

17 I'm not really sure. Patty had received that phone call.

18 Q. Okay. And did you and Patty or just Patty go --

19 A. No. We both headed down to the school at the

20 same time.

21 Q. Okay. And what did the school do as a punishment

22 for HS?

23 A. They gave her APEP.

24 Q. APEP. Now, did her punishment end there, or did

1 you and Patty decide to have consequences for her at home?

2 A. We had grounded her and also required her to
3 break up with that boyfriend.

4 Q. Okay. Let's start with the grounding. What does
5 grounding entail at this particular moment?

6 A. At this point in time it was taking away her
7 phone, no game privileges, no movies.

8 Q. Video games?

9 A. Yes.

10 Q. How often was she on her cell phone?

11 A. All the time.

12 Q. Okay. So she's a typical teenager?

13 A. All the time.

14 Q. Okay. So how did she feel when you took away her
15 phone for getting in trouble at school?

16 A. Very rebellious, very angry.

17 Q. How would she -- How did you know she was very
18 angry?

19 A. Typical stomping, raising of the voice, slamming
20 of the door. That would be her door or the door to the
21 hallway.

22 Q. Okay. How long did you ground her for?

23 A. For the incident?

24 Q. Yeah.

1 A. Two to three weeks, depending on her performance.
2 It would have been two weeks, unless she acted up, and then
3 it was extended for three weeks.

4 Q. Did she in fact break up with CJ when you and
5 Patty told her she had to?

6 A. No.

7 Q. Okay. How did you come to learn that she had not
8 broken up with CJ?

9 A. She was messaging CJ on Instagram and I caught
10 her.

11 Q. At the house?

12 A. Yes.

13 Q. Okay. What did you do?

14 A. I immediately had her break up with him over
15 Instagram.

16 Q. Can you explain to the jury what that means?

17 A. I sat there and watched her write we're breaking
18 up sentences over Instagram and made her send them, because
19 Patty and I had previously discussed you need to break up
20 with this boy.

21 Q. Okay. And did you have any consideration to --
22 Well, strike that. Did you notify Patty that you had caught
23 her on there with CJ?

24 A. Yes. Immediately as soon as she got home.

1 Q. Okay. Did Patty remain in agreement that this
2 boyfriend had to go?

3 A. Most definitely, yes.

4 Q. Okay. And how did HS take you standing there and
5 making her really do it?

6 A. Not very well.

7 Q. Was she upset?

8 A. Yes.

9 Q. At you?

10 A. Yes.

11 Q. Now, we've heard some testimony about right
12 around this time in January 2019 about some rumors that were
13 going around that you were sexually molesting or something.
14 Tell us about that. How did you --

15 A. I was notified of those rumors when OS got home
16 from school. Patty had been home -- HS had been home sick
17 that day.

18 Q. So OS comes home from school?

19 A. Yes.

20 Q. And what do you learn?

21 A. That her boyfriend at the time, CJ, was spreading
22 these rumors.

23 Q. Okay. And when you learned that what did you do
24 to confront it?

1 A. That's when I found out that HS had been texting
2 or -- well, yeah, texting over Instagram with CJ.

3 Q. Okay. But what did you do to address these
4 rumors?

5 A. We immediately had her break up with him.

6 Q. Okay. Did you tell Patty about these rumors or
7 did you hide it?

8 A. Oh, yes, yes, I most definitely told her.

9 Q. What did you say to her?

10 A. Well, CJ has been spreading these rumors.

11 Q. Okay. And did -- what did Patty do?

12 A. That essentially led up to me finding out that HS
13 had been texting over Instagram. Patty dismissed the
14 accusations stating that she would never do this thing.

15 Q. All right. So she didn't believe them to be
16 true?

17 A. No.

18 Q. Okay. And then you were saying that led you to
19 find out about the communication going on between --

20 A. HS and CJ, yes.

21 Q. Did you confront HS about the rumors?

22 A. Yes.

23 Q. Tell us about that.

24 A. At the time she had not known why he would start

1 these rumors. I didn't find out until later that she had
2 admitted that she told him.

3 MR. MERRILL: Objection. Hearsay.

4 THE WITNESS: Hearsay, okay. I apologize.

5 THE COURT: Stop. Objection?

6 MR. KALTER: I think the objection is founded.

7 THE COURT: Okay. The jury will disregard that
8 comment. Thank you.

9 Continue, Mr. Kalter.

10 MR. KALTER: Thank you.

11 Q. (By Mr. Kalter) All right. After this whole
12 thing with the rumors and after you making HS break up with
13 CJ, did she continue to ask you to rub her sore legs?

14 A. Yes.

15 Q. Okay. And did you approach this differently at
16 this point?

17 A. Yes. I no longer went any higher than just above
18 the knee.

19 Q. And why is that?

20 A. There's no way I'm going to make any founding for
21 these rumors.

22 Q. Okay. All right. So, around this time in early
23 2019, can you describe your and Patty's relationship?

24 A. It was getting a bit more rough. She was

1 spending more time after work out drinking with friends.

2 MR. MERRILL: Objection.

3 THE COURT: What's the objection?

4 MR. MERRILL: Character evidence. It's not
5 relevant whether she is drinking or not.

6 THE COURT: Overruled. Go ahead.

7 THE WITNESS: So she was spending more time out
8 after work.

9 Q. (By Mr. Kalter) Okay. And that -- how did that
10 impact your relationship?

11 A. Badly.

12 Q. Okay. Did you argue over things or --

13 A. Every other day.

14 Q. Okay. Tell us about that.

15 A. When she would come home earlier in the morning,
16 we would get in to arguments just regarding where were you,
17 what were you doing, et cetera.

18 Q. Okay. Did that force you to have to take care of
19 the kids more when she was not coming home right after work?

20 A. Yes. That would mean I would have to get up with
21 them more often in the mornings.

22 Q. Now, between the beginning of 2019 and July of
23 2019, did your relationship improve with Patty at all or
24 how --

1 A. No, not at all. It continued to go downhill the
2 more often she stayed out.

3 Q. Okay. So that bring us to July 14, 2019. TJ,
4 tell us what happened that day.

5 A. Early to mid afternoon, me and OS had gone
6 outside to start to move the pool around to the back so we
7 could get it filled up for HS's birthday party, which was
8 that Sunday.

9 Q. So that was the following Sunday?

10 A. I believe it was. It might have been Saturday.
11 It was the 20th. This was on a Sunday that we were doing
12 this, which was the 14th. About five minutes outside, I
13 hollered at HS come help us, this is for your party, come
14 help us move this stuff so we can get it filled. No
15 response. I assumed she heard me. It's a mobile home. It's
16 really thin walls. You can hear pretty well from the front
17 door.

18 Q. So let me stop you for a second. HS testified
19 that you told -- you asked OS to do it because you were too
20 lazy but OS never went out there?

21 A. Not at all.

22 Q. That's not at all what happened?

23 A. No.

24 Q. Is there any doubt in your mind that Owen and you

1 were setting up the pool?

2 A. Not at all.

3 Q. Okay. So -- All right. So you said you were
4 yelling for her to help?

5 A. Yep. And then I went back outside to continue
6 moving -- It was a larger pool. There were a lot of metal
7 frame pieces that we had to get done, moved. So about five
8 or ten minutes later after me and OS got almost half of the
9 stuff moved, I went back in, hollered at her again. No
10 response. So, I figured, well, she's probably not going to
11 come out and help.

12 So me and OS continued to move -- we got about
13 three quarters of the frame work. And at this point it's for
14 her birthday. I'm getting a little annoyed.

15 Q. Sure.

16 A. So I went back inside to confront her on why she
17 wasn't outside helping.

18 Q. What happened then?

19 A. I asked her why she wasn't outside helping. She
20 said she did not hear me. She didn't have headphones in
21 or --

22 Q. Oh, okay. Did you ask her to come out at that
23 time?

24 A. No. I asked her why she hadn't come out and

1 helped.

2 Q. Okay. And did you guys have an argument?

3 A. Yes, we did.

4 Q. Okay. What did you do?

5 A. I went to take her phone away. I had gotten her
6 phone at the time. And then she had told me, well, I'm going
7 to tell your mom you're molesting me -- her mom. And then
8 she wrestled the phone from me.

9 Q. Okay. Let's stop for a second. So you took her
10 phone for not going outside?

11 A. Right. I was only going to take it away for the
12 rest of the day.

13 Q. Did you confirm that? Did you communicate that
14 to her?

15 A. Yes, I did.

16 Q. And then what?

17 A. And then she wrestled it from my hand. And, I
18 say wrestled it, because she pulled so hard she ended up on
19 the bed.

20 Q. And then when in all of this did she say what you
21 said about she was going to tell Patty?

22 A. I want to say right after that. But right in
23 there.

24 Q. Okay. But it was after the phone?

1 A. Yes. After I had initially taken the phone.
2 Q. Right. And what did you say when she made that
3 threat?
4 A. You know I don't do these things to you. I'm
5 going to have a conversation with your mom.
6 Q. Okay. And did you have any interaction with her
7 after that until --
8 A. No.
9 Q. -- you next saw Patty?
10 A. No. I didn't talk to her. I left her room
11 immediately and shortly thereafter texted Patty.
12 Q. Okay. So we've seen the text messages that have
13 been admitted in to evidence. Is there any dispute that
14 that's you texting Patty?
15 A. No, not at all.
16 Q. Those are your text messages with Patty?
17 A. Yes, sir.
18 Q. Okay. The text message said, please come home
19 right after work, or something to that effect?
20 A. Right.
21 Q. And what was your intent there?
22 A. Just to have a conversation with my wife.
23 Q. About?
24 A. About these allegations again.

1 Q. Okay. So did Patty come home after work?
2 A. Yes.
3 Q. All right. So tell us what happened when she got
4 home.
5 A. I pulled her in to the room, our room, which was
6 to the left of the door, and shut the door, because I wanted
7 to have a conversation with my wife first. And I stated, so
8 evidently I've been molesting HS since I want to say
9 December.
10 Q. And how did Patty react?
11 A. Not very well.
12 Q. Meaning what?
13 A. She got pretty pissed off.
14 Q. Okay.
15 A. I said it sarcastically because we had dealt with
16 this prior.
17 Q. Okay. And did she yell? Did she throw -- What
18 do you mean?
19 A. At that time her voice raised and she just
20 started yelling.
21 Q. Okay. Did she express whether or not she wanted
22 you to remain in the house?
23 A. Yes. She had stated you leave or I will.
24 Q. Okay.

1 A. And I --

2 Q. All right. So at any point during this

3 conversation did you tell her that you in fact put your

4 finger in HS's vagina or anything to that effect?

5 A. No.

6 Q. And HS testified that you had a bag packed before

7 your wife got home. Is that true?

8 A. Yes.

9 Q. What was going on there? What were you thinking?

10 A. Due to Patty staying out and rumors -- Am I

11 allowed to say that, rumors?

12 Q. Why did you pack your bag?

13 A. I was under the impression Patty was cheating on

14 me for quite a while, so.

15 Q. So were you planning to leave the house?

16 A. At the time, I didn't want to, no. But I figured

17 that was a possibility.

18 Q. If what?

19 A. If Patty and I went through these discussions and

20 she had admitted to cheating on me.

21 Q. All right. So did you leave the house that day?

22 A. Yes, I did.

23 Q. And did you end up moving in with your folks in

24 Reno?

1 A. Yes, I did.

2 Q. Months later were you contacted by Detective

3 Messmann?

4 A. Yes, I was.

5 Q. And when he called you did he give you an option

6 to meet in Fernley substation or anywhere other than Silver

7 Springs?

8 A. No.

9 Q. Would the Fernley substation be closer to where

10 you lived than Silver Springs?

11 A. I don't think so, no.

12 Q. Which one was farther away?

13 A. I think Silver Springs is.

14 Q. Farther away than Reno?

15 A. Yes.

16 Q. Did he offer to come to your home and talk to

17 you?

18 A. No, he didn't.

19 Q. How about at a Starbucks?

20 A. No.

21 Q. It was the Silver Springs substation?

22 A. Yes, sir.

23 Q. Okay. Did you agree to go?

24 A. I didn't have a day off until the next Monday, so

1 we had to schedule it as my next day off. But, yes, I did.

2 Q. What did you think would happen if you didn't go
3 down and talk to him?

4 A. At the time I'm not quite sure. But I was under
5 the impression that it was going to go further than that
6 because of his demeanor on the phone. So I kind of took it
7 like I was going to get arrested anyway.

8 Q. Okay. So let's turn to the day of the interview
9 yourself. Detective Messmann said your dad had drove you
10 down; is that right?

11 A. Yes, he did.

12 Q. And when you got there you were taken by
13 Detective Messmann in to the room. We got a picture of it in
14 evidence.

15 A. Yes.

16 Q. From start to finish how long was this interview?

17 A. Almost five hours.

18 MR. KALTER: Your Honor, may I approach the
19 clerk?

20 THE COURT: Yes.

21 MR. KALTER: Thank you. Can I have Exhibit 19?
22 And that's been admitted; correct?

23 Q. (By Mr. Kalter) Mr. Bernal, I'm showing you
24 what's been admitted as Exhibit 19.

1 A. Yes, sir.

2 Q. Okay. Is that the room where the interview took
3 place?

4 A. Yes, sir.

5 Q. So, in this photograph, Mr. Bernal, it's clear
6 who you are. Where are the two detectives positioned between
7 you and the door?

8 A. On the other side of the table. The right side
9 would be Detective Messmann and --

10 Q. All right. Let me reask that question.

11 THE COURT: It's fine.

12 Q. (By Mr. Kalter) Are they between you and the
13 door?

14 A. Yes, sir.

15 Q. Okay. And how did that make you feel?

16 A. A bit trapped.

17 Q. Okay. We've heard testimony that you used the
18 bathroom three times during the interview. Did you just say
19 I'm going to the bathroom or did you ask if you could go use
20 the bathroom?

21 A. I requested a bathroom break.

22 Q. And why is that?

23 A. I had had a lot of coffee.

24 Q. Okay. Why did you request as opposed to saying

1 you were going?

2 A. Because it's a police station and I had two
3 detectives with me. I didn't exactly feel able to move
4 around very freely.

5 Q. Okay. At one point in the interview did you
6 request to have a cigarette?

7 A. Yes.

8 Q. Okay. And, obviously, that means you're a
9 smoker. How much were you smoking back then?

10 A. About a pack a day. That's 20 a day.

11 Q. Okay. And what would happen to you if you went
12 long periods of time without having a smoke?

13 A. I would feel anxious, cold sweats, sometimes
14 nauseous.

15 Q. Okay. And when you asked to have a cigarette,
16 did they say, okay, go ahead?

17 A. No. They said it wouldn't take much longer.

18 Q. Okay. And did it take much longer for you to
19 actually have the cigarette?

20 A. Almost three hours.

21 Q. And how were you feeling during those three hours
22 without what you're accustomed to with nicotine?

23 A. Considering I go through one almost every 45
24 minutes, every half hour, pretty anxious, nauseous, which is

1 why I couldn't eat during the interview. I had a bag of
2 chips.

3 Q. All right. There was testimony about the door
4 that you would have to go through from leaving the interview
5 room to the bathroom.

6 A. Yes.

7 Q. Do you recall that?

8 A. Yes.

9 Q. Do you agree with Detective Messmann that that
10 door was there?

11 A. Yes.

12 Q. Okay. When you would go to the bathroom where
13 was Detective Messmann?

14 A. Standing by that door.

15 Q. Okay. For you to exit the bathroom and go out of
16 the exit entrance that you entered the building in would you
17 go past Detective Messmann or what would happen?

18 A. I wouldn't have to pass him, no. But it was a
19 long hallway, like he said yesterday, I believe it was 30
20 feet.

21 Q. Right.

22 A. I would have to walk right in front of him and
23 hang a left.

24 Q. Okay. So you would have to go past him to get

1 out?

2 A. Yes.

3 Q. Okay. For the first four hours of the interview
4 did you deny any accusations that you had in any way
5 inappropriately touched --

6 A. Yes, I denied completely.

7 Q. Did they seem to accept your answer?

8 A. No.

9 Q. And how did that make you feel?

10 A. Like until I got -- until they got what they
11 wanted out of me, I wasn't going anywhere.

12 Q. Okay. Did you feel -- If you had said, I want to
13 leave, I'm done, what do you think would have happened?

14 A. I think an excuse would have been made. Oh,
15 wait, just hold on a second.

16 Q. What do you think would have happened to you?

17 A. At the beginning I would have been stopped. At
18 the end I would have been arrested.

19 Q. Even before what you said on the video about an
20 accidental entering?

21 A. Oh, yes. Yes.

22 Q. Late in to the interview did they approach you
23 with implementing a CVSA?

24 A. Yes.

1 Q. And did Detective Messmann tell you if you're
2 guilty don't take it, if you're not guilty take it?

3 A. Yes.

4 Q. How did you feel about taking it?

5 A. I was reluctant to take it at all.

6 Q. Okay. Did Detective Dues actually tell you that
7 this could wind up in your criminal history, this CVSA?

8 A. Yes, he did. Having a background in loans and
9 taxes, I know how important a background check is.

10 Q. Okay. Did you believe him?

11 A. Yes, I did.

12 Q. Was that a concern for you?

13 A. Yes, it was.

14 Q. Where were you working at the time?

15 A. I was working for JC Penney warehouse.

16 Q. Okay. Is that where you wanted to remain
17 working?

18 A. No. It was something I could find on the spot.
19 I'm not trained in warehouses.

20 Q. After the CVSA ended did they let you leave?

21 A. No, they did not.

22 Q. Did they accept your answers?

23 A. No.

24 Q. We heard when Ms. Schumann went through a number

1 of questions with Detective Messmann, is it true that
2 Detective Messmann often times during this interview
3 suggested to you, hey, maybe it was just an accident,
4 something to that effect?

5 A. Yes, sir.

6 Q. Was it multiple times?

7 A. Yes.

8 Q. Okay. So, after all of this, four and a half
9 hours, the CVSA, you still haven't had a cigarette, what did
10 you decide to do?

11 A. I didn't think I was going to leave until I gave
12 them what I gave them.

13 Q. Okay. And did -- do you agree you told them that
14 you had slipped and accidentally entered HS?

15 A. With the recommendations, yes.

16 Q. What do you mean by that?

17 A. After repeatedly hearing it's an accident, it's
18 okay, that's what I came up with.

19 Q. Did they tell you if you told them something like
20 that, that a judge or a DA would give you leniency?

21 A. Yes, sir.

22 Q. Okay. Did you accidentally slip and insert your
23 finger in to HS ever?

24 A. Never, sir.

1 Q. We heard testimony from Detective Messmann about
2 a dream you had involving having a child with an adult that
3 was HS. Why did you think -- First of all, was this only one
4 dream like this?

5 A. Yes, sir, it was a single dream.

6 Q. Okay. And was the person in the dream an adult?

7 A. Yes. Usually early -- or later twenties, early
8 thirties.

9 Q. And why did you think it was HS?

10 A. Because, at the very end, I had called her Bug,
11 and that's what we use as a nickname for HS.

12 Q. Okay. So, to be clear, this was a dream?

13 A. Yes, sir.

14 Q. Okay. Have you ever fantasized about having --

15 A. Never.

16 Q. -- a baby with HS?

17 A. Never.

18 Q. Okay. Have you ever thought about her in any
19 kind of sexual manner?

20 A. No.

21 Q. There was some discussion in the interview about
22 HS's hymen and that she had fallen or something with a fence.
23 Were both you and Patty aware of that?

24 A. Yes. She told me.

1 Q. Patty?

2 A. Yes.

3 Q. I'm going to ask you one last time, sir. In
4 fact, have you ever touched HS in any manner, her vagina,
5 sexually or otherwise?

6 A. No, sir.

7 MR. KALTER: Okay. Pass the witness, your Honor.

8 THE COURT: Okay. Mr. Merrill.

9 MR. MERRILL: Thank you, your Honor.

10 CROSS-EXAMINATION

11 By Mr. Merrill:

12 Q. Good morning.

13 A. Hi, Mr. Merrill.

14 Q. I'm going to ask you a few follow-up questions.

15 A. Yes, sir.

16 Q. So, on direct, you talked about some of your
17 employment?

18 A. Yes, sir.

19 Q. You indicated that you became unemployed in about
20 2018?

21 A. Yes, sir. March of 2018.

22 Q. In March of 2018, did you take over perhaps more
23 of a role around the house?

24 A. Yes.

1 Q. And, also with the kids, you took on a bigger
2 role?

3 A. Yes. I started taking them to the bus more often
4 so that Patty could sleep.

5 Q. And that includes picking them up from the bus as
6 well?

7 A. Yes, sir.

8 Q. Okay. Now, we talked about you did text Patricia
9 to come home on the 14th of July; is that correct?

10 A. Yes, sir.

11 Q. And you had already packed your bags prior to
12 Patricia coming home?

13 A. Yes, sir.

14 Q. What did you put inside your bags?

15 A. About two to three days worth of clothing.

16 Q. And you left your bags on the master bed?

17 A. Yes.

18 Q. Is that correct? Okay. Now, when Patty came
19 home, you both went in to the master bedroom; is that, again,
20 correct?

21 A. Yes.

22 Q. So, on direct, you said this, you said -- you
23 brought HS in to the master bedroom; correct? And you said
24 this, you told Patty, so, evidently, I've been molesting HS

1 since December. You said that on direct; correct?

2 A. Sarcastically, yes.

3 Q. Sarcastically?

4 A. Yes.

5 Q. Okay. Now, when you met with the detectives, you

6 told them essentially the same thing; is that correct?

7 A. Yes.

8 Q. You told them, and I quote, and I shut the door,

9 I said exactly what I said I said. So, evidently, I've been

10 fingering HS for since I think I said December or December

11 that's when all this shit happened; is that correct?

12 A. Yes.

13 Q. That's what you told the detectives?

14 A. Yes.

15 Q. And then during that interview with the

16 detectives, you went on and said this, well, did you do it.

17 Those are Patty's words; correct?

18 A. Yes.

19 Q. And, during that interview with the detectives,

20 you told them and I went once on accident?

21 A. I had to come up with something.

22 THE COURT: Okay. That wasn't an answer.

23 THE WITNESS: I had said that during the

24 interview, yes. Sorry, your Honor.

1 Q. (By Mr. Merrill) So when -- So on direct you
2 said the exact same thing as -- Let me rephrase that. Now,
3 when you spoke to the detectives, you told them it happened
4 once on accident?

5 A. During the interview?

6 Q. Yes, during the interview.

7 A. I had said that, yes.

8 Q. You testified on direct that you only massaged HS
9 between the knee and the calf?

10 A. The upper knee, yes. Just above the knee.

11 Q. Just above the knee?

12 A. That's where she complained the most about the
13 pain. She had knock-knee when she was little.

14 Q. Okay. So she was knock-kneed when she was a
15 child?

16 A. Yes, when she was a child.

17 Q. So she had knee problems?

18 A. Yes.

19 Q. How far up the knee would you go?

20 A. Just above the knee. I would say about six to
21 seven inches maybe.

22 Q. So you were here when Detective Messmann was
23 testifying?

24 A. Yes, sir.

1 Q. And he relayed an incident that you told him
2 during the interview where you described rubbing HS's legs
3 and you start down at her ankle area?

4 A. Yes.

5 Q. Do you recall telling Detective Messmann that?

6 A. Yes, I do.

7 Q. Okay. Do you recall telling Detective Messmann
8 that she was wearing these cool pajama pants?

9 A. Yes.

10 Q. Now, when you were rubbing her that time, was
11 that skin to skin?

12 A. What do you mean?

13 Q. Did you use your hands on her legs?

14 A. Yes.

15 Q. Okay. And was that underneath her pants or above
16 her pants?

17 A. Above her pants. Her pants were pulled up. You
18 can't exactly get at the knee when they're pant length.

19 Q. So your testimony is that you rubbed her legs and
20 her pants were pulled up?

21 A. Up to above the knee.

22 Q. To above the knee?

23 A. Yes.

24 Q. Regarding that incident, did you tell Detective

1 Messmann this, because they're really, really big? Do you
2 recall making that statement?

3 A. They're oversized pajamas, yes, sir.

4 Q. Do you recall telling Detective Messmann that is
5 when you slipped on a piece of paper and penetrated HS's
6 vagina?

7 A. Yes, that is what I stated.

8 Q. And HS's pants were pulled up at this time?

9 A. Above the knee, like I said.

10 Q. And HS was laying on her back at that time?

11 A. That's what I said at the video, yes.

12 Q. And during that time you indicated to the
13 detectives that you don't know if she was wearing underwear
14 or not?

15 A. That's what it said on the video.

16 Q. So you told the detectives that as you were
17 rubbing HS's legs, her pants were pulled up, and you
18 accidentally penetrated her; is that correct?

19 A. That's what it said, yes, what I said on the
20 video.

21 Q. Are you indicating to us today that that is not
22 the truth?

23 A. Yes, sir, I am.

24 Q. And during that interview you were not being

1 truthful?

2 A. No, I was not.

3 Q. After you made that admission to the detectives,
4 did you state this, I know it takes time to break me down to
5 fucking make me say the truth?

6 A. Yes, sir, I did.

7 Q. But today now you're saying that that wasn't the
8 truth?

9 A. Right.

10 Q. But today is?

11 A. I'm under oath today. Yes, sir, this is the
12 truth.

13 Q. So, jumping back to the statement that you made
14 to Patricia when she got home on the 14th of July, 2019, when
15 you told her that you evidently have been fingering HS. You
16 indicated today that that was being sarcastic; is that
17 correct?

18 A. Yes, sir. We had dealt with this prior. I
19 didn't think anything was going to come of it.

20 Q. Okay. And when you said, and I went once on
21 accident, during that same conversation, was that not the
22 truth?

23 A. No.

24 Q. So you were not telling the truth when you talked

1 to Patty?

2 A. Regarding the conversation I had with my wife,
3 no, that was not the truth.

4 Q. So there's these accusations of molestation that
5 came out, you said, was it December or January?

6 A. Yeah, December or January.

7 Q. December of 2018, January of 2019?

8 A. Yes, sir.

9 Q. Okay. And on direct you made it a point to say
10 that you continued to massage HS's legs even after that
11 point; is that correct?

12 A. Yes.

13 Q. But you only went to the knees. Was that your
14 testimony?

15 A. Just above the knees, yes. I never went any
16 higher.

17 Q. But even after those accusations you still
18 continued to rub her legs?

19 A. Yes. She was my daughter. Why would I not help
20 her?

21 Q. I want to talk about the interview. When you
22 came in to the interview room with the detectives, did they
23 provide you some food?

24 A. Yes. Yes. Detective Dues, his wife had made

1 some apple pastries. They were quite delicious.

2 Q. Do you recall what kind of pastries they were?

3 A. I believe he called them a mincemeat pie.

4 Q. So you got one of those when you first came in?

5 A. Yes. I hadn't had anything to eat yet.

6 Q. I see. And you were provided some chips it
7 sounds like?

8 A. A couple hours in I believe it was, yes.

9 Q. And you had some water as well?

10 A. Yes.

11 Q. Did they both ask if you wanted anything else?

12 A. They had asked me if I wanted, like, lunch. I
13 believe they were going to order a pizza. But at the time I
14 couldn't eat because I hadn't had any cigarettes yet. It
15 stabilizes me and allows me to function more correctly.

16 Q. Cigarettes?

17 A. Yes.

18 Q. Okay. Did you have a toothache that day?

19 A. Oh, yeah. My teeth are pretty messed up.

20 Q. I see. Did you have a toothpick?

21 A. No, I did not at the time.

22 Q. Now, you came down to the Silver Springs
23 substation with your father?

24 A. Yes.

1 Q. Did he drive?

2 A. Yes, sir.

3 Q. And when you came in to the interview room did

4 you make this statement, well, I appreciate you guys giving

5 me the chance to clear my name of this crap?

6 A. Yes, sir, I did. You saw that on the video.

7 Q. You wanted the opportunity to be able to tell

8 your side of the story; is that correct?

9 A. Yes, sir.

10 Q. Now, at the very beginning of the interview,

11 Detective Messmann, did he also tell you, you can get up at

12 any time and walk out that door?

13 A. Yes, he did. You saw that also on the video.

14 Q. So you indicated that you had some, it seems

15 like, maybe some marriage problems, stuff like that, going

16 on?

17 A. Yes, sir.

18 Q. During the interview did you state this, and it's

19 supposedly just the finger and that's when I laid it all out

20 and then I went ahead and I let it slip in once and I didn't

21 mean to. You wanted to know what was bugging me for all this

22 time and that's what was bugging me. Did you make those

23 statements?

24 A. Yes, as you saw on the video.

1 Q. And that was your response when you were talking
2 to Patty?

3 A. On the video.

4 Q. On the video.

5 MR. MERRILL: Nothing further, your Honor. Thank
6 you.

7 THE COURT: Okay. Anything else, Mr. Kalter?

8 MR. KALTER: Briefly, your Honor. Just a couple
9 of follow-up questions.

10 REDIRECT EXAMINATION

11 By Mr. Kalter:

12 Q. TJ, we saw -- we know that Detective Messmann
13 advised you you were free to leave. That was at the very
14 beginning of the interview?

15 A. Yes, sir, at the very beginning.

16 Q. Was that ever repeated to you ever again in the
17 nearly five hours in that room?

18 A. No, sir.

19 Q. And, just so that the jury is clear, you agree to
20 a number of -- you agree to making a number of statements to
21 the police -- to the detectives. But what -- the actual
22 conversation with Patty in the room, are you disagreeing that
23 you made the statements that you said you did in the police
24 station actually to Patty?

1 A. Yes, sir. The only other thing I said was I
2 recommend to get her some therapy.

3 Q. Okay. You did say that to Patty?

4 A. Yes. That's the only other thing I stated to her
5 before she kicked me out.

6 MR. KALTER: Thank you.

7 MR. MERRILL: No follow-up, your Honor.

8 THE COURT: Okay. You're excused, Mr. Bernal.

9 All right, Ladies and Gentlemen. Just stay there
10 for a second. Ladies and Gentlemen, we're going to take the
11 lunch recess. So we'll get started again at 1:15, okay.

12 So, during the recess we're about to take, you're
13 admonished that it's your duty not to discuss amongst
14 yourselves or with anyone else any matter having to do with
15 this case. It is your further duty not to form or express
16 any opinion regarding the guilt or innocence of the defendant
17 until the case has been finally submitted to you for
18 decision. You're not to read, view, or listen to any
19 newspaper, radio, television or the internet concerning this
20 case nor allow anyone to read or comment upon them to you or
21 in your presence. This includes any type of social media
22 relating to this case. You are not to investigate or attempt
23 to obtain any additional information about this case outside
24 the courtroom. Do not visit the scene or attempt any

1 investigation on your own. Do not do any internet searches
2 in relation to any matter in court. Do not read any legal
3 texts or books regarding any issue raised in the court.
4 Should any person attempt to discuss the case with you or in
5 any manner attempt to influence you with respect to it, you
6 are to advise the bailiffs who will advise the Court and I
7 will take care of it. Have a good lunch.

8 Okay. So, you can head back, Mr. Bernal. Go
9 ahead.

10 THE DEFENDANT: Thank you.

11 THE COURT: Okay. So what do we have after
12 lunch?

13 MR. KALTER: We have Debra Davis and we expect
14 that to be a lengthier presentation.

15 THE COURT: Okay. It's your case. Okay.

16 MR. KALTER: So if she -- Let's say she finishes
17 up with an afternoon break around 4:00 o'clock, I mean, I can
18 get Dr. O'Donohue probably to appear then or it would be my
19 preference to put him on first thing in the morning and we
20 could do jury instructions. But, I mean, I just want some
21 guidance.

22 THE COURT: So, I don't know how long she's going
23 to testify, so I don't know how to answer. You know, if it's
24 four or 4:30, yeah, we'll probably break at that point.

1 MR. KALTER: Okay.

2 THE COURT: If it's three, no, we shouldn't break
3 at that point.

4 MR. KALTER: That's all I had to hear, okay.

5 THE COURT: Okay. So that's all. You know, but
6 it's your case. So I don't know how long it's going to take.
7 All right. So anything else?

8 MR. MERRILL: What time should we be back?

9 THE COURT: Well, we're going to start at 1:15.
10 So, you know, be ready to go at least five minutes before
11 that.

12 MR. MERRILL: Okay.

13 THE COURT: All right. So, anything else to
14 bring up?

15 MR. KALTER: No.

16 MR. MERRILL: No.

17 THE COURT: Okay. I did -- Oh, just let me bring
18 one thing up. I did have the clerk give you guys the
19 modified things we had previously talked about during our
20 conference on the instructions. And I also gave out the
21 forms of verdict, which were attached. So I didn't give back
22 your theory instruction. I don't know if you want to change
23 that or whatever. But, otherwise, I think that covers
24 everything. Just make sure, all right. And then we'll talk

1 about jury instructions either later on this afternoon or
2 tomorrow, okay.

3 MR. MERRILL: Sounds good.

4 THE COURT: Okay. All right. Thank you. Have a
5 good lunch. Court is in recess.

6 (Lunch recess was taken)

7 THE COURT: All right. Anything to bring up
8 before we get started again?

9 MR. MERRILL: No, Judge.

10 MS. SCHUMANN: No, your Honor.

11 THE COURT: Okay. So bring in the jurors.

12 All right. Counsel stipulate to the presence of
13 the jurors?

14 MR. MERRILL: Yes, Judge.

15 MS. SCHUMANN: Yes, your Honor.

16 THE COURT: Okay. All right. Next witness,
17 please.

18 MS. SCHUMANN: Defense would call Dr. Debra
19 Davis.

20 THE COURT: Dr. Davis, please come forward.

21 THE CLERK: Just come up and stop and raise your
22 right hand, please.

23 THE COURT: Yes. Just raise your right hand,
24 face the clerk, and be sworn.

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(The witness was sworn in)

THE COURT: Okay. Doctor, come on around here
and have a seat right there.

Your witness, Ms. Schumann.

And, Doctor, you can take your mask off while
testifying if you wish.

THE WITNESS: Okay.

THE COURT: It's up to you.

THE WITNESS: We'll see how this sounds.

DEBRA DAVIS

Called as a witness on behalf of the
Defendant, having been first duly sworn,
Was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Schumann:

Q. Okay. Dr. Davis, can you state your name and
spell your last name for the record?

A. Debra Davis, D-a-v-i-s.

Q. Okay. And, ma'am, what do you do for a living?

A. Well, I'm a professor of psychology at the
University of Nevada in Reno.

Q. Okay. And can you tell us about your educational

1 background?

2 A. Yes. I grew up in Texas and I went to the
3 University of Texas in Austin. Got a Bachelor's in
4 psychology there. And then I went to Ohio State and got a
5 Ph.D. in psychology at Ohio State and stayed there for two
6 years as a post-doctoral research assistant before I took my
7 first job.

8 Q. And have you been -- Oh, I'm sorry.

9 A. Well, my first job as a professor. I had lots of
10 them while I was in graduate school.

11 Q. Okay. Do you want to tell us about the
12 employment you've had since you obtained your Ph.D.?

13 A. Okay. Something just fell out of my -- Okay.
14 Well, after leaving Ohio State, I went to Southern Illinois
15 University for two years as an assistant professor in the
16 psychology department there. Then I taught at Georgia State
17 University in Atlanta for a year. And then I came to the
18 University of Nevada in Reno. I've been there since that
19 time.

20 And, in addition to being a professor in the
21 psychology department, I'm also a member of the faculty of
22 the National Judicial College, which is actually on our
23 campus but, it's a college that gives Master's and Ph.D. in
24 judicial studies and also trains new judges when they take

1 the bench. It has a lot of other courses that judges can
2 take if they want because they want to.

3 Q. Have you taught courses relevant to
4 interrogations and confessions?

5 A. I have. Some of them have been at the National
6 Judicial College. And then also I've taught a lot of
7 continuing legal education seminars for lawyers and just, you
8 know, for state bar organizations, for defense organizations,
9 for the military, and so on.

10 At school, at the university, I teach psychology
11 and law, which has a big section on interrogations. And then
12 it actually there is a little bit about interrogations even
13 beginning in Psychology 101 and in Social Psychology, which I
14 teach often. But the main place that we cover is in
15 psychology in law and then forensic psychology. And the main
16 difference is just in forensic psychology you're focusing a
17 lot on psychological evaluations, you know, like, a clinical
18 psychologist would do to assess people for mental disorder or
19 personality differences that end up mattering in court
20 proceedings in one way or another. And I'm sorry. I don't
21 think I have COVID to give to anybody, but I can't breathe.

22 THE COURT: No. You're fine testifying. You're
23 plenty socially-distanced there. But is that your hearing
24 aid that I hear?

1 THE WITNESS: Yes. But it fell out and the mask
2 and the hearing aid don't go well together.

3 THE COURT: I just want to make sure you're
4 comfortable. That's all.

5 THE WITNESS: It's okay. I borrow these from my
6 mother when I come testify because often in courtrooms it's
7 such a big thing that I can't hear well. But we'll see. So
8 far I can probably hear anyway without them.

9 Q. (By Ms. Schumann) So have you taught to only
10 defense groups?

11 A. Yes. No. Did you say only?

12 Q. Yes.

13 A. No, not only. But more to defense groups. I
14 have accepted basically every invitation to give continuing
15 legal education seminars that has ever been issued, except
16 for one when I had a scheduling conflict and I couldn't do
17 it. So the defense bar asks me more often. But I've taught
18 to state bar organizations, to, like I said, the military.
19 And when you talk to the military, sometimes both the
20 prosecutors and the defense are there. Sometimes it's just
21 the defense. So -- And then some of the judges from the
22 National Judicial College organized an event for me to talk
23 to lawyers in Louisiana. And also another private attorney
24 did the same thing. So I talked to some lawyers in

1 Schreveport and in Baton Rouge that were just privately
2 organized.

3 Q. Okay. What about your training and teaching
4 experience regarding scientific research methods?

5 A. Well, in order to get a Ph.D. in psychology, you
6 have to take a lot of courses on research methods, on
7 statistics. I minored in statistics. But I also -- I don't
8 know how many research method classes I had at the graduate
9 level. Probably at least six of them. And since then I've
10 also taught research methods and statistics at the
11 undergraduate and the graduate level. And then, of course,
12 I'm supervising Ph.D. students in doing their research and
13 their dissertations.

14 Q. Do you also review journals, articles for
15 journals?

16 A. I do, yes. I've been the member of an editorial
17 board on about four journals. And that means that you're
18 appointed to review articles at least once a month or so for
19 that journal. And then also an ad hoc reviewer, which means
20 that just in a particular article that the editor thinks that
21 maybe you have some expertise in that area so they send it to
22 you even when you're not on the editorial board. So I've
23 probably reviewed for maybe 40 journals that way.

24 And also granting agencies, the National

1 Institute of Health and the National Science Foundation here
2 in the United States and then comparable organizations in
3 Israel, Belgium, and Canada, so --

4 Q. What about book publishers?

5 A. Yes, I've reviewed for some of those too.

6 Q. Okay. Have you also reviewed for granting
7 agencies?

8 A. Well, yeah. That's what I mentioned the National
9 Science Foundation and the National Institute of Health and
10 so on.

11 Q. Dr. Davis, have you received grant funding
12 yourself from law enforcement to investigate and prove
13 techniques for interrogation?

14 A. I have. There's been a massive funding by the
15 Department of Justice, and under them the FBI, of research to
16 try to develop better interrogation methods and better
17 interviewing methods that are intelligence interviewing, that
18 are criminal interviewing, and better methods of lie
19 detection actually too. And so I got a grant from the
20 Department of Justice, the FBI under them, to test some ideas
21 I had about interrogation techniques.

22 Q. Have you also personally attended police
23 interrogation trainings?

24 A. Yes, I did. There are two main interrogation

1 training organizations in America. One is called John Reid &
2 Associates and the other one, Wicklander-Zulawski, and then
3 the FBI also trains local law enforcement. But I took the
4 basic and advanced training from both Reid and
5 Wicklander-Zulawski.

6 Q. Now, have you also published papers relevant to
7 interrogations and confessions?

8 A. Yes.

9 Q. What were those publications? Can you just name
10 a few?

11 A. Okay. Well, right now, I think I have probably
12 about 28 of those on that topic and then others on other
13 topics. But, you know, the first thing I published was a
14 chapter in the handbook of forensic psychology. It was about
15 a hundred-page review of the scientific literature on
16 interrogations and confessions.

17 And, since then, I've, you know, published a
18 number of other book chapters and -- A couple of them
19 actually are specifically chapters about interrogation of
20 sexual assault or sexual abuse suspects and, well, just a lot
21 of different ones. And then some empirical papers also, also
22 testing some things about what tends to promote false
23 confessions and particularly about what interrogation tactics
24 tend to promote false confessions and just a lot of different

1 stuff. I don't know how I best summarize it. But about 28
2 of them altogether.

3 Q. Okay. Have you also presented talks on
4 confessions at scientific conferences?

5 A. Yes. But I have no memory of how many I've done
6 of those.

7 Q. Do you have a rough estimate?

8 A. You know, I could easily lie if I give you one.
9 I just don't remember. And you have my CV there. But I
10 would assume it's probably 15 or 20 of them.

11 Q. Okay. Do you also have publications where
12 interrogations and confessions are not covered -- they're not
13 the only thing covered?

14 A. Yes. So, for example, there is a form of false
15 confession in which a person comes to actually falsely
16 remember that they committed a crime. I know that sounds
17 crazy unless you really understand about the literature on
18 false memories that people can come to falsely remember just
19 about anything. And there have been instances where people
20 have falsely confessed to things like killing their
21 girlfriend or a relative, a child or something, that they had
22 come for a period of time to falsely remember that they did
23 or actually sexually molesting their children too.

24 And the other thing that I have probably

1 published the most on is memory. And so I have various
2 memory publications that cover this topic of, you know,
3 falsely remembering things that you yourself did that you
4 didn't actually do, including crime.

5 Q. Have you also published in areas having to do
6 with sex and sex crimes?

7 A. Sex and what?

8 Q. And sex crimes.

9 A. Yes. Adult sexual assault. So, you know, that
10 also overlaps with everything because, you know, a lot of the
11 issues that come about in adult sexual assault cases have to
12 do with memory in part because alcohol is involved in so many
13 adult sexual assault cases that -- and then people don't have
14 very good memories of it. Sometimes they have alcohol
15 blackout and don't remember anything. So there's that kind
16 of overlap with my studies of memory.

17 And then there's also another overlap with the
18 study of confession, because there's certain techniques used
19 in sexual assault cases commonly that my students and I have
20 been investigating one of them called a pretext call where
21 the victim might call up the suspect at the behest of the
22 police and try to get them to confess over the phone. So
23 we've been doing some studies on pretext calls.

24 But, also, I've been doing a number of studies on

1 how people communicate sexual consent to one another or
2 sexual refusal and how misunderstandings occur.

3 Q. Now, have you previously testified as an expert
4 on interrogations and confessions?

5 A. Yes.

6 Q. Where?

7 A. Nevada, California, Arizona, Washington state,
8 Oregon, Idaho, Utah, Colorado, Chicago -- or, yeah, Chicago,
9 Pennsylvania, Mississippi, Louisiana, South Carolina, New
10 Hampshire, New York, Hawaii. And that's all I -- I think
11 that's all on confessions.

12 Q. Well, that's impressive. Did you at least get a
13 vacation out of the Hawaii trip?

14 A. I did stay three extra days. But it was when the
15 volcano had been erupting. It didn't smell very good and we
16 couldn't go all over the island unless you wanted to choke to
17 death. But it was better than not being there really.

18 Q. Well, Dr. Davis, did you prepare a power point
19 for today -- for your testimony today?

20 A. I did.

21 Q. Madam Clerk, if you could activate it.

22 Now, Ms. Davis, do you have the pointer? Okay.
23 Let's go ahead and get started. So how do we know false
24 confessions are a problem?

1 A. Okay. Well, we know this is in a number of
2 different ways. Wow, it's showing what my computer shows.
3 THE COURT: We just got to get it in to full
4 page.
5 THE WITNESS: Should I go ahead and answer that
6 while she's --
7 THE COURT: Just wait a second until they get
8 your power point right.
9 MS. SCHUMANN: Your Honor, can Dr. Davis come
10 over here and fix this?
11 THE WITNESS: It doesn't usually do that and I
12 don't know why it's doing it now.
13 THE COURT: Because you need to put it in to
14 slide show. You had it on presenter view. So go back to
15 display settings.
16 MS. SCHUMANN: Okay.
17 THE COURT: And then go swap presenter view and
18 slide show.
19 MS. SCHUMANN: It's not letting me select that.
20 THE COURT: It's not?
21 MS. SCHUMANN: Let me see if I can end it and
22 start again.
23 THE COURT: There we go. All right.
24 THE WITNESS: It's a good thing TO have a judge

1 that's a tech nerd. Normally I can't solve these things
2 without my husband, who is really super good at this stuff.

3 Q. (By Ms. Schumann) Okay, Dr. Davis. So how do we
4 know false confessions are a problem?

5 A. Hopefully I didn't do anything. So we know a
6 number of different ways. And, you know, false confessions
7 are often difficult for people to believe happen, but we have
8 a lot of evidence that converges from different ways of
9 studying that they do. This is one way. We do have some
10 individual case accounts that have been kind of spectacular.
11 One that's listed on here is Peter Riley is someone who
12 falsely confessed to killing his mother after about an
13 18-hour interrogation.

14 We also have not just the New York jogger case,
15 which many people may have heard of, but many cases where
16 there are more than one person who falsely confessed to the
17 same crime and they were proven to do so. I mean, these were
18 all people that were proven innocent later.

19 And then this third one that different people
20 falsely confess to crimes that were all committed by a serial
21 killer in this case. But these are not people who knew each
22 other.

23 The second bullet point, these are people that
24 were part of a group that did know each other and were

1 associated with each other that falsely confessed to the same
2 crime.

3 This last one, none of these false confessors
4 knew each other, but there was just these different crimes
5 that were committed and the police happened to get the wrong
6 suspect for some of that serial killer's crimes and different
7 people falsely confessed.

8 The second way, we have sort of related to the
9 first way that there's been an effort, of course, in the
10 country for a long time that free people that have been
11 convicted who were actually innocent or wrongful convictions
12 they're called. So there's certain organizations that are
13 dedicated to trying to free the wrongfully convicted. One of
14 them is called The Innocence Project that people may have
15 heard of.

16 And then there's also over the many years,
17 starting really back in the late 1800s, people were
18 identifying cases in which someone had falsely confessed and,
19 you know, looking at them.

20 So there are some studies that have been done to
21 try to identify all of those wrongful convictions that they
22 could, you know. And then ask the question what is it that
23 got those people wrongfully convicted, what evidence was
24 presented against them in trial that might have been mistaken

1 or misleading. And so they look at what percentage of those
2 people who have been wrongfully convicted falsely confessed.

3 So this is an example. Right now there's this
4 place calls the National Registry of Exonerations. It tries
5 to keep track of ongoing exonerations across the country.
6 They update their website every time they get a new
7 exoneration. So I went there last night. And what you can
8 see, of all the cases, there are only 684 cases where a
9 person has been exonerated, 12 percent of those people
10 falsely confessed.

11 And those other numbers are numbers where there
12 was an indication of an arrest and somebody made a false
13 accusation or that there were bad forensics in some cases or
14 official misconduct of some kind.

15 There are other ones, this same place, the
16 national registry has asked what percent of the exonerations
17 that were for child sex abuse cases, sexual assault,
18 homicide, or other crimes, what percentage specifically in
19 these types of cases had falsely confessed. And you can see
20 that the sexual assault, seven to nine percent for child and
21 adult.

22 Now, this does not mean that's what percentage of
23 people falsely confess at all. All it means is that of the
24 ones they were able to discover that was a wrongful

1 conviction, this percentage of them had falsely confessed.

2 So then we have -- These are some of the studies
3 over the years looking at calculations of wrongful
4 convictions. So you see the number in the center, the number
5 of wrongful convictions that they had identified and what
6 number of those falsely confessed. And on the right-hand
7 side is the percentage of those people who were exonerated
8 had falsely confessed.

9 So, if you look at the many, many studies like
10 this, the national registry is a low of around seven percent.
11 There's actually one that was done just in Chicago that's a
12 high of over 60 percent of those cases have falsely
13 confessed.

14 But it depends on the type of crime and on the
15 type of jurisdiction and what kind of police interrogation
16 techniques they use and whether they release that blind and
17 use more coercive techniques or they don't.

18 Q. Now, is there another way that we know false
19 confessions are a problem?

20 A. Yes. This third way, again, it's kind of
21 related. But this is an example of attempts where these
22 authors tried to find all of the previously unidentified
23 false confessions that they could. They weren't looking now
24 to find all the people who had been exonerated because they

1 had been wrongfully convicted, but just people who have
2 falsely confessed. And they wanted to study, you know, who
3 are these people that are falsely confessing, what are the
4 crimes that they're falsely confessing to, what is the
5 characteristics of the interrogation and so on. So they're
6 really looking at false confessions per se.

7 They have proven them wrong in one of these four
8 ways. Sometimes the crime didn't occur. Somebody may have
9 been convicted of killing but somebody turned out alive. Or
10 proven they couldn't have done it or if they were sometimes
11 in jail for something else at the time or their alibi turned
12 to be unavailable. The true perpetrator was identified and
13 convicted really clearly, sometimes with DNA or something
14 objectively very clear. Or that the defendant just has
15 proved that the defendant's DNA did not match. There's a lot
16 of DNA exonerations in the United States, of course.

17 And so they look and say, okay, what are they
18 falsely confessing to in this sample. And part of the reason
19 for looking at that is that people might assume you're only
20 going to falsely confess if it's not very important and it's
21 not going to get you in big trouble. But you can see that
22 the vast majority of the ones that they were able to locate
23 were to murder, the most serious kinds of crime.

24 There are a lot of rape ones on there because one

1 thing, a lot of the exonerations by The Innocence Project are
2 to sexual assault crimes and they're proven innocent by DNA.

3 So, again, this doesn't mean that it tells us
4 what's really out there. This is what they were able to find
5 among people that were exonerated. It doesn't tell you what
6 percent of all the false confessions out there are to what
7 crime. But it does tell you that people really do falsely
8 confess to extremely serious things. You know, we don't know
9 the percentage that do so, but we know that there's a lot in
10 the objective numbers out there that have falsely confessed
11 to really serious things.

12 They also ask how long were, you know, these
13 interrogations. This is the average length. If you don't
14 look at just exoneration, you just look at the police
15 interrogations out there, that most of them are two hours are
16 less. But 80 percent are less than 30 minutes. So two hours
17 is the average. But 80 percent are less than 30 minutes. 95
18 percent within one hour. And then the reason that the
19 average gets up to two is because there's some interrogations
20 out there that last for many, many hours and it brings the
21 average up. But it's not typical to interrogate somebody
22 for, you know, four or five or six or 18 hours or 30 hours or
23 things like that that you sometimes see in many cases.

24 So, in their study, these are the ages of people.

1 And you can see also there is a conception out there that,
2 you know, maybe only young people or mentally defective
3 people falsely confess. But you can see that some of these
4 false confessions are older.

5 And, you know, I mentioned before that there had
6 been multiple false confessors to the same crime. And, in
7 their study, they identified more than a third of their
8 sample in which more than one person falsely confessed to the
9 same crime. And why would you do that? If they're exposed
10 to the same kind of interrogation and the same kind of very
11 powerful influences, it shouldn't be surprising that people
12 act the same way when they're put in the same situation.

13 Q. Now, this study, is there a percentage of the
14 false confessors who case went to trial?

15 A. Yes. In this particular study they looked --
16 they didn't just look at false confessors who had gone to
17 trial. They looked at all the false confessors that they
18 could identify. And some false confessors are identified
19 before they're taken to trial. Because, nowadays, you know,
20 they may test the DNA after a person has confessed and find
21 out, whoa, it doesn't match, you know, and so they don't go
22 to trial.

23 But, of those that did go to trial, 81 percent
24 were convicted anyway. And then there's another study that

1 shows around 83 percent. So most false confessors tend to
2 get convicted in part because a lot of people don't
3 understand that people will falsely confess or why they would
4 do so. And then when you watch somebody it's hard to tell.

5 Q. Is there another way we know false confessions
6 are a problem?

7 A. Yes. I just have a couple of examples in here.
8 But there's actually now probably about 15 different studies
9 that I can think of where researchers have just surveyed
10 large portions of the population and asked them have you ever
11 been interrogated by police and if you were interrogated then
12 did you ever falsely confess or did you ever truly confess,
13 you know, et cetera.

14 And in all of those studies that then some
15 proportion of people report that they falsely confessed.
16 This one is a high one from the Gudjonsson study. But they
17 typically range from around, you know, about three percent to
18 a high of about 12 percent that say, yes, I have falsely
19 confessed to police at some time, but only of the people who
20 were ever interrogated obviously. Because you're not going
21 to falsely confess if you weren't interrogated. So that's
22 another example of where we got almost four percent.

23 But, like I said, there are about 15 studies now.
24 One of them includes some mentally ill people and then

1 there's a higher rate of false confessions among the mentally
2 ill. Because if you are vulnerable in some way, you know,
3 such as mental illness or a low IQ or something like that,
4 then you have a higher likelihood of falsely confessing if
5 you're innocent and you're interrogated.

6 Q. What other way do we know false confessions are a
7 problem?

8 A. So this one up here now, these researchers
9 conducted a survey of police departments across the country
10 and they asked them a lot of questions. They asked them how
11 they interrogate, what particular test they use, and so on.
12 One of the questions is do you think you ever get a false
13 confession and, if so, what percent of the confessions that
14 you get do you believe are false.

15 So on average those police said 4.78 that you can
16 see on there. I don't think -- I can't read that from here.
17 I don't know if y'all can. But basically right around one
18 out of every 20 they thought was -- that they were getting
19 were false.

20 Q. Okay. Is there also laboratory studies
21 demonstrating that people can be led to give false
22 confessions?

23 A. Yes. These -- Laboratory studies on this began
24 back in 1996 and they just exploded since then, because

1 there's so much concern with trying to understand what is it
2 that makes a person likely to falsely confess. And so Saul
3 Kassin originally he tried to -- he brought subjects in to
4 the laboratory and asked them to do a task on the computer
5 and then at some point falsely accused them of crashing the
6 experimenter's computer. And the question was would they
7 falsely confess to doing that.

8 He also in some cases had another student there
9 and that student falsely testified that they saw this suspect
10 student falsely press the computer. In other cases they
11 didn't. And he also made them, when they were doing the
12 task, go really fast, so it would be harder for them to know
13 for sure which keys they hit or he had them go slow. And
14 what he found out -- And I'm just emphasizing this because
15 there's so many studies after that show comparable kinds of
16 things is that what you see on this graph on the right-hand
17 side are the ones that had a false witness against them. And
18 those three different bars are whether they disagreed to sign
19 a confession, whether they said that they really actually
20 believe they did it or -- and whether, the third one, which
21 is the smallest one, that they actually said they remember
22 doing it, had a false memory of doing it.

23 But you can see that all of those things are more
24 likely if there's a false witness to say, yeah, I saw you do

1 it.

2 They also, you can see that the second bars are
3 bigger than the first one and the fourth bar is bigger than
4 the third one. And that indicates that when they were going
5 faster and could be less sure about which keys they did or
6 did not push, they were more prone to falsely confess.

7 And what that illustrates -- And we'll talk more
8 about it later -- is that people are less sure about what
9 they did for any reason because they were drunk or because,
10 you know, it was a long time ago or, you know, any reason.
11 They become more prone to falsely confess, especially if
12 there's someone else that says they have some kind of
13 evidence that they actually did it.

14 Sorry. I'm not coughing because I'm sick. But
15 after I talk a lot, you know, sometimes.

16 Q. Now, is there a specific interrogation method
17 that's used by most law enforcement agencies?

18 A. Yes. One second. I mentioned this technique
19 before, which is one of the ones that I was trained in, the
20 Reid technique. Reid is an agency that's been training law
21 enforcement since the 1930s. And they, in fact, developed
22 the kind of techniques that are mostly used now. I'm sorry.

23 Q. That's okay. Take your time.

24 A. I just need a minute for this cough drop to --

1 Q. No. Go ahead.

2 THE COURT: Here you go, Doctor.

3 THE WITNESS: I got some. I just need this cough
4 drop. I don't go anywhere anymore and I don't talk very much
5 anymore, so my voice is out of shape.

6 So Reid in the 1930s started to try to develop a
7 technique of interrogation that they felt would be less
8 coercive. Because, up until that time, police were beating
9 suspects and threatening their families and threatening them
10 and hanging them outside of windows and threatening to drop
11 them. So, as you might imagine, if police were doing
12 something like that, they were getting a lot of false
13 confessions.

14 So Reid tried to develop techniques to avoid the
15 false confessions and to have a method of psychological
16 interrogation rather than physical intimidation and torture.
17 So they've had interrogation manuals since the 1930s and it's
18 become the thing that almost all law enforcement in America
19 were trained and really across the world for a period of
20 time.

21 And then Wicklander-Zulawski became licensed by
22 Reid to teach their techniques. The FBI adopted Reid
23 techniques. They teach Reid techniques. And the reality is
24 whether you say you've been trained by the Reid organization

1 or not that this is how people interrogate in America. You
2 know, that's changing now, and I'll probably explain at some
3 point. But, you know, Reid has been now repeated because it
4 gets a lot of false confessions, but for a different reason,
5 not because it's torturing people but because it's convincing
6 people that they'll be better off if they confess than if
7 they don't.

8 So, anyway, Reid is the predominant one. They
9 claim that, you know, they trained well more -- 15 years ago
10 they claimed that they trained half a million law enforcement
11 in America. And, you know, as I said, it's now been
12 disendowed. Wicklander and Zulawski had been using Reid for
13 years and training them for years announced a few years ago
14 in 2017 that they were not going to train that anymore,
15 precisely because of the false confessions that the Reid
16 techniques was being shown to -- It's stuck. This is green.
17 It should be working.

18 Q. Oh, there you go.

19 A. So those guys are moving away from it. And, as I
20 said, the FBI has funded many, many millions of dollars right
21 now to try to find a different way to do things that will be
22 more successful at getting truth confessions but also not get
23 so many false confessions.

24 Q. Okay. So before we turn to the interrogation

1 itself, can you tell us what interrogation scholars consider
2 to be the primary cause of false confessions?

3 A. Well, clearly it's a no-brainer. But you have to
4 have the wrong person in the interrogation room. And, if you
5 put innocent people in the interrogation room, then it
6 proposes this risk that they'll falsely confess. Because the
7 Reid method it's absolutely brilliant psychology as far as
8 convincing somebody to do what you're asking them to do. It
9 incorporates all the most scientifically tested and supported
10 principles of social influence out there. But what they're
11 trying to get them to do is to confess.

12 So, if you take the most powerful techniques of
13 social influence and you deploy them on somebody, you know,
14 then it's going to work, you know. And it can convince them
15 to falsely confess for a variety of reasons. So you have to
16 be very careful about who you put in the interrogation room
17 and not interrogate people unless you have a very, very good
18 reason to think that they're guilty. Otherwise, you pose
19 this risk of getting a false confession.

20 Q. Okay. Can you explain to the jurors how police
21 techniques can mislead them in to interrogating innocent
22 suspects as if they're guilty?

23 A. Yeah. Well, you know, two main reasons is -- one
24 is that often people are just put in the interrogation room

1 when there isn't any concrete evidence of any kind against
2 them. So, for example, Billy Wayne Cope is a, kind of a
3 famous case of false confession. And he was interrogated for
4 raping and killing his daughter because he was the one that
5 had been there. He was in the house. He was asleep, as it
6 turns out, really. But he was cleared by DNA. Somebody came
7 in the house and raped his daughter and killed her.

8 But they interrogated him because there is a
9 stereotype that says if somebody dies it's usually a family
10 member. You know, so if the woman dies, the husband is
11 interrogated, things like that. So it can be a suspect of
12 convenience that gets put in the interrogation room.

13 The other thing is that law enforcement has been
14 taught certain techniques to try to decide whether somebody
15 is or is not telling the truth. So the Reid manual, most of
16 it actually is devoted to how to tell if somebody is lying or
17 not. And so, you know, part of what people do is they
18 interview people before they decide to interrogate them,
19 whether they interview them out, you know, on-site or whether
20 they bring them in to the interrogation room and then they
21 try to assess whether they think they're telling the truth.
22 And if they think they're lying, they can proceed to an
23 interrogation.

24 Also, they have some misconceptions about what

1 reflects lying and what reflects guilt. And, you know, these
2 are reflected in Reid what they call the behavioral analysis
3 interview, which is all of their instructions on how to take
4 deception. But it also can be because, you know, there have
5 been people that have been interrogated because they blush
6 too much when they were talking to police or didn't show
7 enough emotion or showed too much emotion and these have the
8 police have these theories about emotion, so they end up
9 interrogating the wrong person. And then, of course, there's
10 false allegations or misleading evidence at various times
11 that get them in to the interrogation room.

12 Q. Can you talk to the jurors about what can go
13 wrong with efforts to test suspects for deception?

14 A. Yeah. So whether it is the behavioral methods of
15 detecting deception or the formal things like the polygraph
16 or the voice stress analyzers, the assumption is that when
17 people lie it makes them nervous in some way or it makes them
18 anxious. And so you probably are familiar with how that
19 works with a polygraph, that it detects breathing and heart
20 rate and galvanic skin response and so on. And the voice
21 stress analyzer, allegedly, detects stress in the voice. But
22 the methods that are trained to interrogators for behavioral
23 detection of lies also detect things. They're looking for
24 signs of nervousness to a large degree.

1 And, as you can imagine, even if you didn't do
2 something but you're brought in to the interrogation room and
3 somebody is accusing you of doing it, you're going to be
4 anxious and nervous. So that's part of the problem.

5 But, a lot of the problem is that these methods,
6 specific methods, with, first of all, getting them in to the
7 interrogation part. Because if you are supposed to interview
8 them first and decide if you think they're deceptive, and, if
9 so then you can interrogate them. But these behavioral
10 methods have shown actually not to work but actually make
11 people worse at detecting deception than if you don't use
12 them.

13 So how do we know that? I mean, first of all, we
14 have literally just hundreds of studies of how do you detect
15 deception and how good -- some of them are just if you show a
16 bunch of people and your participants and research people who
17 are lying and people who are telling the truth, can they tell
18 the difference and accurately classify people as telling lies
19 or telling the truth.

20 And, as it says here, in study after study after
21 study we don't do any better than flipping a coin. You know,
22 we're not good at it. When people actually get caught in
23 daily life, these studies have actually shown it's usually
24 because some evidence -- you find some evidence that they're

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.