

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLE DUANE ENGELSON

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 82691

Appeal From A Judgment of Conviction (Jury Trial)
Fifth Judicial District Court
The Honorable Robert Lane, District Judge
Court No. CR9226

APPELLANT'S APPENDIX VOLUME 4 OF 22

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Electronically Filed
Jul 23 2021 05:52 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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1 No. CR-9226

2 Dept. No. 2

FILED
FIFTH JUDICIAL DISTRICT

AUG 19 2020

Nye County Clerk
Deputy

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF NYE

7 THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

8 -oOo-

ORIGINAL

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 vs.)

13 COLE DUANE ENGELSON,)

14 Defendant,)

TRANSCRIPT OF PROCEEDINGS
PETROCELLI HEARING - DAY 1

AUGUST 10, 2020

1:30 P.M.

PAHRUMP, NEVADA

16 APPEARANCES:

17 For the State:

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19 For the Defendant:

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RONNI BOSKOVICH, ESQ.
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22 The Defendant:

COLE DUANE ENGELSON

25 Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

I N D E XWITNESSES FOR THE STATE:PAGEKISHANNA MARQUEZ

Direct Examination by Mr. Vitto

6

Cross-Examination by Ms. Boskovich

14

Redirect Examination by Mr. Vitto

30

DR. JOHN LEPORE

Direct Examination by Mr. Vitto

36

Cross-Examination by Mr. Martinez

42

INVESTIGATOR TODD ARMS

Direct Examination by Mr. Vitto

54

Cross-Examination by Mr. Martinez

57

VICTORIA SCHLICK

Direct Examination by Mr. Vitto

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-oOo-

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1 - 7 Photographs

PTC*

92

8 UMC Quick Care
paperwork

PTC*

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9 Printout of visit to
Kidfixers Pediatrics

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10 Photograph postmortem
of Yessenia

PTC*

13 Report prepared by
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17 Extraction Report -
metadata re: photographs 53

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NOTE: (PTC* - Exhibits marked prior to commencement
of the proceedings.)

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, AUGUST 10, 2020

2 1:30 P.M.

3 -oOo-

4 P R O C E E D I N G S

5
6 (Whereupon State's Proposed Exhibits 1
7 through 16 are marked for identification prior
8 to the commencement of proceedings.)

9 THE BAILIFF: All rise.

10 THE COURT: Thank you. Good afternoon.
11 Please be seated. Sorry for the delay. I guess there
12 was a miscommunication with the jail whether or not to
13 appear on TV or present. But Jamele said you guys
14 wanted him to be here in person; so I'm glad they
15 brought him up.

16 This is Case No. CR-9226, State versus
17 Engelson. It's the time and place set for a
18 Petrocelli Hearing. I believe Mr. Vitto has some
19 witnesses ready today that he wants to -- Kirk, were
20 there any opening statement you want to make, Kirk, to
21 help me understand what we're looking at today?

22 MR. VITTO: You know what, Judge, I can
23 tell you that obviously the standard is relevance,
24 clear and convincing, and that the prejudicial impact
25 does not substantially outweigh the probative value.

1 The prejudice has to be unfair prejudice. But the
2 legal arguments, I think Counsel and I expect will
3 take place at the close of this hearing.

4 We're calling -- today, I will be calling
5 Dr. John Lepore, Kishanna Marquez, Todd Arms. We'll
6 go through Chris DeFonseka's report. And then my last
7 witness today will be Victoria Schlick. She was the
8 mother of the victim in this matter, Yessenia.

9 THE COURT: It's my understanding we've got
10 some set for tomorrow also?

11 MR. VITTO: I do, Judge. We have
12 Joshua Teter. I will be going through
13 Detective Alexander Fernandez's report. She's
14 unavailable to us, and you can probably guess why. So
15 I will be going through her report, and I will have
16 Captain David Boruchowitz here, and we will be going
17 through his report. You've already read Detective
18 Fernandez's report as part of your analysis in regard
19 to the Defense Motion to Suppress; and so we will just
20 kind of be going over that again.

21 THE COURT: Okay. Anything you guys want
22 to say before we call the first witness?

23 MR. MARTINEZ: Just briefly. I have a
24 question for the State.

25 You referenced Captain Boruchowitz's

1 report. Are you referring to the transcript?

2 MR. VITTO: I'm sorry. Yes, the
3 transcript.

4 MR. MARTINEZ: Just want to make sure we're
5 on the same page, Judge.

6 THE COURT: All right. Are you ready then?

7 MR. MARTINEZ: We're ready, Judge.

8 THE COURT: All right. You can call the
9 first witness.

10 MS. BOSKOVICH: For the record, we will be
11 invoking the exclusionary rule.

12 THE COURT: Thank you, sir. Is this a
13 potential witness; is that what you were saying?

14 MS. BOSKOVICH: No.

15 MR. MARTINEZ: It's not, Judge. Just doing
16 it as a matter of record.

17 THE COURT: If you can approach up here to
18 the witness stand, please. We'll ask you to raise
19 your right hand and be sworn.
20 Whereupon,

21 KISHANNA MARQUEZ,
22 called as a witness on behalf of the State, was sworn
23 and testified as follows:

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Thank you. Have a seat.

1 We have more than six feet social
2 distancing; so if anybody wants a mask off so you can
3 be heard, you just let us know.

4 MR. VITTO: Thanks, Judge.

5 DIRECT EXAMINATION

6 BY MR. VITTO:

7 Q. Kishanna, please state your name for the
8 record and spell both your first name and last name?

9 A. Kishanna Marquez, K-i-s-h-a-n-n-a,
10 M-a-r-q-u-e-z.

11 THE COURT: I vote the mask comes off. Any
12 objection?

13 Can't hear you, Kishanna. Thanks.

14 THE WITNESS: Sorry.

15 MR. VITTO: Yeah, you can just -- that's
16 perfect. Thank you.

17 Q. (By Mr. Vitto) Now, Kishanna, I want to
18 direct your attention to December of 2016. Where were
19 you living at that time?

20 A. Lake Mead and Hollywood.

21 MS. REPORTER: I can't hear you.

22 THE WITNESS: Lake Mead and Hollywood.

23 Q. (By Mr. Vitto) And that's in Las Vegas,
24 Nevada?

25 A. Yes, ma'am -- or sir.

1 Q. And what type of structure were you living
2 in?

3 A. A condo.

4 Q. And with whom were you living at that time?

5 A. Victoria and her children.

6 Q. Do you know Cole Engelson?

7 A. Yes, I do.

8 Q. Do you see him in court today?

9 A. Yes, I do.

10 Q. Can you describe an article of clothing
11 he's wearing?

12 A. Striped; orange.

13 Q. Orange and white stripes?

14 A. Yeah.

15 MR. VITTO: Your Honor, I would ask that
16 the record reflect this witness's in-court
17 identification of the defendant.

18 THE WITNESS: (Inaudible.)

19 THE COURT: Yes. It will so reflect.

20 Q. (By Mr. Vitto) Now, again directing your
21 attention to that particular month and year, do you
22 recall an incident involving the defendant and
23 Yessenia?

24 A. Yes, I do.

25 Q. Now, you had said that you were living with

1 Victoria and her children. What were the names of her
2 children?

3 A. Dwight, Nicole, and Yessenia.

4 Q. Now, I asked you about your recalling an
5 incident involving the defendant and Yessenia. Were
6 you able to observe an incident?

7 A. Yes.

8 Q. Where were you when you observed this
9 incident?

10 A. I was in the house, and I just heard her
11 screaming. I had got home early. I heard her
12 screaming downstairs, and I came to the door to find
13 out what was going on. And he was dragging her like
14 up the stairs, because I guess she had threw some
15 rocks or something.

16 Q. All right. So you said that you had gotten
17 home early; where had you been?

18 A. I believe maybe an interview or school.

19 Q. Okay. So who was baby-sitting Yessenia?

20 A. Cole.

21 Q. The other children weren't home?

22 A. No.

23 Q. Okay. Now, what was your vantage point?

24 How were you able to observe this incident between the
25 defendant and Yessenia? Where were you, and how did

1 you see this?

2 A. I was upstairs. I just heard her screaming
3 because I had opened all the windows. I opened the
4 door and just saw him dragging her across the rocks,
5 and he told me she threw some rocks or something. And
6 I just took her from him and was like, "You can't be
7 throwing rocks."

8 Q. Okay. How was he dragging her?

9 A. Like by her arm.

10 Q. By one arm?

11 A. Yes.

12 Q. All right. Now, when you saw this event,
13 what did you do next?

14 A. Well, I grabbed her from him.

15 Q. Okay.

16 A. And then I put her on her bed.

17 Q. Well, let me stop you there. So you were
18 upstairs?

19 A. Uh-huh.

20 Q. And you saw this event happening downstairs
21 in the rocks?

22 A. Yeah. He had dragged her upstairs, up the
23 stairs.

24 Q. Okay. So he dragged her through the rocks,
25 and then he dragged her up the stairs?

1 A. Yes.

2 Q. How did Yessenia react when she saw you?

3 A. She was just screaming for me, like, "Te,
4 Te, Te, Te." I didn't know what was going on.

5 Q. Okay. And "Te-Te" was the name that she
6 called you?

7 A. Yes.

8 Q. How was she reacting?

9 A. She was just crying.

10 Q. Because you mentioned that she was
11 screaming?

12 A. Yeah. She was screaming, like she was
13 crying, she was screaming, she was distraught, she was
14 upset. I just took her from him and sat her down,
15 like so I could -- I didn't understand what was going
16 on.

17 Q. I understand.

18 A. You know, so then he told me she was
19 throwing rocks, and I told her you know, "You don't
20 throw rocks. You can't be throwing rocks."

21 Q. And she was still upset at this point?

22 A. Yeah.

23 Q. She was still crying?

24 A. Yeah.

25 Q. Was she even two years old yet? Oh, wait.

1 Was she two?

2 A. Yeah, maybe about two.

3 Q. So was she trying to talk to you through
4 her tears?

5 A. Yeah. She was telling me, "No, I didn't.
6 I didn't do it." Because he told me that she threw
7 the rocks. She was like, "No. I didn't do it."

8 Q. Does she have a name for him?

9 A. Coley.

10 Q. She called him "Coley"?

11 A. Uh-huh.

12 Q. And did she say anything about Colely.

13 A. No. She just said, "I didn't do it. It
14 was Coley." That's what she said.

15 Q. All right.

16 A. So I don't know, you know, what happened.
17 Like, I wasn't there.

18 Q. Right. Now, did you have opportunity to
19 speak with Victoria about this?

20 A. Yeah, that same night.

21 Q. Okay. Now, when you were talking to
22 Victoria about this event, do you happen to recall
23 what she was doing?

24 A. Yeah. I think she was picking up toys or
25 wrapping stuff. I think it was around Christmastime.

1 Q. Okay. And there was still wrapping paper?

2 A. Gifts, toys.

3 Q. Did you say anything to Victoria about the
4 defendant?

5 A. Yes, I did.

6 Q. What did you say to her?

7 A. I told her, "He can't handle her. He can't
8 handle her."

9 Q. Can you describe his demeanor during this
10 event?

11 A. Frustration. He was frustrated.

12 Q. Let me show you State's --

13 THE COURT: Jamele, can you grab my iPad
14 for me?

15 MR. VITTO: Do you want me to continue,
16 Judge?

17 THE COURT: Yes, sir.

18 Q. (By Mr. Vitto) -- State's Proposed
19 Exhibits, for the purposes of this hearing anyway, 15
20 and 16.

21 (Mr. Vitto shows the Defense Counsel
22 the exhibits.

23 Q. (By Mr. Vitto) Let me show you those
24 photographs. I want you to take your time. Go ahead
25 and look at them. When you've had opportunity to

1 review those, let me know, and I will ask you some
2 questions about those?

3 A. Okay.

4 Q. Okay. Do you recognize those photographs?

5 A. That was out in front of our old condo.

6 Q. Is the condominium that you lived in at the
7 time in that photograph?

8 A. Uh-huh, yes, it is.

9 Q. Which number. On the back -- I'm sorry.
10 On the back, you'll see that those photographs are
11 numbered?

12 A. 16.

13 Q. Okay. So you can see the condominium that
14 you were living in, in State's Proposed Exhibit 16?

15 A. Correct.

16 Q. And is that your vantage point. Is it from
17 upstairs from there that you were able to see the
18 defendant?

19 A. Yes.

20 Q. And it's your testimony that he was
21 dragging her through those rocks?

22 A. Yes, on the side.

23 Q. And then he dragged her by the arm up the
24 stairs?

25 A. Yeah, yes.

1 Q. And she was screaming the whole time?

2 A. Yes.

3 MR. VITTO: Your Honor, I have no -- well,
4 let me just ask this: Do the -- the photographs were
5 not taken three years ago? Do they appear accurate to
6 you?

7 A. Yes.

8 Q. Do they look -- in those photographs, is
9 that the way it looked when you lived there?

10 A. Yes.

11 MR. VITTO: All right. I have no more
12 questions of this witness, Judge.

13 THE COURT: Thank you.

14 Counsel?

15 MS. BOSCOVICH: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. BOSKOVICH:

18 Q. Ms. Marquez, how did you and Victoria meet?

19 A. Me and Victoria met through my sister at a
20 club, a nightclub that we all worked at.

21 Q. You all worked at the nightclub?

22 A. Uh-huh.

23 Q. And how long ago did you meet Victoria?

24 A. Oh, geez. I have known her since like
25 2000. Before that maybe.

1 Q. And you testified that she was your
2 roommate?

3 A. Yes.

4 Q. When did she move in with you?

5 A. Well, I had a friend of mine that was doing
6 real estate get us a condo somewhere else. She was
7 living somewhere. The door wasn't secured; so I moved
8 us somewhere safe.

9 Q. So how long before this incident that
10 you're describing here today, how long had Victoria
11 lived with you?

12 A. Maybe six months.

13 Q. And that was in Las Vegas?

14 A. Yes.

15 Q. And how many kids does Victoria have?

16 A. She had three.

17 Q. Did you guys live together prior to living
18 in this particular condo?

19 A. Yes.

20 Q. For how long?

21 A. Just a couple of months, like maybe two
22 months when I moved up to the other condo.

23 Q. Why did she eventually move out?

24 A. Of the condo? Uh-huh. I don't know
25 because I was no longer in the apartment. Something

1 happened, and I was told that, you know, if I didn't
2 like what was going on, I could leave, and that's
3 basically what I did.

4 Q. So what happened that caused you to leave?

5 A. I don't remember. I don't even recall.
6 Something probably so stupid as waking me up when I
7 had to work or something. Something stupid like that.

8 Q. Victoria would wake you up?

9 A. No, yeah. They were discussing or arguing
10 in the balcony by the window.

11 Q. Who is they?

12 A. Cole and Victoria.

13 Q. Did Cole ever live with you?

14 A. No. He was there a lot of the times.

15 Q. And then all of you moved out of the condo?

16 A. No. I just vacated the premises.

17 Q. You vacated and left Victoria and her
18 children at the condo?

19 A. Yes, ma'am.

20 Q. So you mentioned that Yessenia was one of
21 Victoria's children that lived there with her? Is
22 that a "yes"?

23 A. Yes, I'm sorry.

24 Q. Approximately how old was she when she
25 lived with you?

1 A. Two, three.

2 Q. How was her demeanor?

3 A. I don't understand the question.

4 Q. What kind of child was she? Was she
5 rambunctious?

6 A. She was rambunctious. She was so smart.
7 She was so smart. She was bubbly, happy.

8 Q. Was she well behaved?

9 A. Yeah. She was a kid. She had her good
10 days. She had her bad days. She was a normal kid.

11 Q. What were her bad days like?

12 A. Like any kid. I mean, nothing different.

13 Q. Tantrums?

14 A. Yeah, sometimes.

15 Q. Did she listen to her mom?

16 A. Sometimes.

17 Q. Did she listen to you?

18 A. Yeah, sometimes.

19 Q. She sounds like a pretty typical
20 two-year-old?

21 A. She was. She was a pretty cool kid.

22 Q. Would you describe her demeanor as terrible
23 two's?

24 A. Sometimes.

25 Q. Did she have lots of energy?

1 A. All the time.

2 Q. Did she run around a lot?

3 A. Yes, ma'am.

4 Q. Bump into things?

5 A. Sometimes.

6 Q. Fall down a lot?

7 A. No, not fall down a lot.

8 Q. And you don't live at that condo anymore,
9 do you?

10 A. Nope.

11 Q. Where do you live now?

12 A. I live -- well, I'm moving back. I just
13 was living in Florida for a while. And I guess I'm
14 recently moving back.

15 Q. When did you move to Florida?

16 A. Maybe about two years ago.

17 Q. So what was the layout of the condo like?

18 A. You walked in, and this was in the living
19 room. On your left-hand side was Victoria's room with
20 Yessenia, and they had a bathroom. You go more into
21 the condo, and there was the kitchen. And then there
22 was another two rooms which that's where I was in that
23 room that was by the patio.

24 Q. So your bedroom was in kind of the back
25 corner?

1 A. Yeah, in the back front corner. Like back
2 but on this side.

3 Q. Looking at --

4 A. See, this is the patio (indicating on the
5 exhibit). And in that patio, that window was my --
6 where I was at.

7 Q. Okay. Where were the stairs in these
8 pictures, because I don't see them?

9 A. This is cut off right here. But the stairs
10 would be going up right there (indicating). It would
11 be in the middle.

12 Q. In the middle of the two photographs?

13 A. Yes, ma'am.

14 Q. So you lived in an upstairs unit?

15 A. Yes, ma'am.

16 Q. And where were you in the condo when you
17 heard Yessenia screaming?

18 A. I was upstairs. I was upstairs, and I had
19 just opened the window because it was a nice, fresh
20 day or whatever.

21 Q. What room were you in upstairs?

22 A. Actually, I was in the living room when I
23 opened the windows. So that too would be in the
24 middle here where it's cut off, kind of where the
25 stairs.

1 Q. And looking at the picture with the
2 balcony, it looks like there's a sliding glass door?

3 A. Yes.

4 Q. And that goes into your living room?

5 A. Yes.

6 Q. Was the sliding glass door open when you
7 heard her screaming?

8 A. Yes.

9 Q. And what window did you look out to see --

10 A. There's a window. You see where this
11 window is at?

12 Q. Okay.

13 A. On our side, it would be another window
14 like that, and then the stairs.

15 Q. So it wasn't the sliding glass door at the
16 balcony. There was another window off to the --

17 A. There was another window too, all of them.

18 Q. So when you saw -- when you first saw Cole
19 and Yessenia, were they downstairs?

20 A. Yes.

21 Q. And he was dragging her through the rocks?

22 A. Yes.

23 Q. At that point did you go outside and meet
24 them?

25 A. That's when I went outside the door. And I

1 was going to meet them, and he was dragging her up the
2 stairs by the time I opened the door, unlocked it, you
3 know.

4 Q. By the time you got outside, was he already
5 upstairs with her?

6 A. Halfway. Yeah, halfway.

7 Q. Halfway up the stairs. And did you run
8 down to meet him on the stairs?

9 A. Well, I kinda was still trying to collect
10 what was going on, like why was she the way she was?

11 Q. Do you remember which arm he was dragging
12 her by?

13 A. It would be her left.

14 Q. Do you know roughly how tall Cole is?

15 A. No.

16 Q. Do you have any guess?

17 A. Everyone a bigger than me. Maybe six foot,
18 five-nine.

19 Q. How tall was Yessenia at the time?

20 A. Oh, my gosh. She was just a little tiny,
21 probably you no taller than the deck.

22 Q. When you saw Cole dragging her, was he bent
23 over?

24 A. No.

25 Q. He was standing up straight?

1 A. Uh-huh.

2 Q. He wasn't on his knees?

3 A. No.

4 Q. Had he lifted Yessenia off the ground?

5 A. Yeah. When he was going up the stairs,
6 taking her up the stairs.

7 Q. What about when he was dragging her through
8 the rocks?

9 A. No. I just seen him dragging her through
10 the rocks, and then I stopped watching because I was
11 trying to get out the door.

12 Q. So her feet weren't -- you don't know if
13 her feet were dragging along the rocks?

14 A. Yeah, they were.

15 Q. Just her feet?

16 A. Yeah, just her feet.

17 Q. How long was he dragging her for?

18 A. I wouldn't recall a time limit.

19 Q. Do you know approximately how far he drug
20 her?

21 A. From here to probably the entrance behind
22 you.

23 Q. To the swinging gates going into the --

24 A. Uh-huh, to right here.

25 Q. Okay. So it's approximately 30 feet, 25

1 feet?

2 MR. VITTO: Thirty.

3 MS. BOSCOVICH: Thirty. Thank you.

4 Q. (By Ms. Boskovich) What was Yessenia
5 wearing?

6 A. Oh, man, I do not even want to lie. I
7 cannot recall. Like her article of clothing, I don't
8 remember.

9 Q. Did she have a long-sleeved shirt on?

10 A. No, because it was hot. Maybe a t-shirt
11 and some shorts with tennis shoes.

12 Q. So what happened when you got outside to
13 confront Cole?

14 A. I just took her, and he told me that she
15 was throwing the rocks. And then I went and sat her
16 down, sat her down on the bed, try to let her calm
17 down, try to get her some water. Told her she don't
18 throw rocks at people. That's not nice. And just let
19 her try to calm down.

20 Q. At any point did you and Cole ever get into
21 a verbal argument?

22 A. No, we did not. That's why I just told
23 Victoria.

24 Q. Did Cole leave after you took Yessenia?

25 A. No, he did not.

1 Q. Did Yessenia run over to you, or did you go
2 to her?

3 A. She was crying; so I took her from him
4 physically. Not necessarily physically, but...

5 Q. Do you know if Cole was picking Yessenia up
6 to babysit her?

7 A. Yeah. He had to babysit her because I
8 couldn't babysit her.

9 Q. Was he just picking her up, or was he
10 taking her?

11 A. Oh, no. I think that he had her at the
12 park.

13 Q. And Victoria's other two children, they
14 were not present?

15 A. No. I think they were in school.

16 Q. Was Yessenia bleeding?

17 A. No.

18 Q. Did you see any scrapes on her?

19 A. No.

20 Q. So you weren't worried enough about her to
21 call a doctor?

22 A. No. I just notified her mother.

23 Q. On direct, you testified that Yessenia was
24 talking to you. So she could talk at the time?

25 A. Yeah, she could talk.

1 Q. And you could understand her easily?

2 A. Yeah.

3 Q. She explained what happened in her --

4 A. No. She just said that she didn't do it.

5 "I didn't do it."

6 Q. Could she speak in complete sentences?

7 A. Yeah, for the most part. Maybe gibberish.

8 Q. Did you immediately call Victoria and tell
9 her what happened?

10 A. No. I waited.

11 Q. Do you know how long you waited?

12 A. Maybe about an hour -- an hour, two hours.

13 Q. Did you wait for Victoria to get home?

14 A. Yes. I waited until I could talk to her by
15 myself later on that evening.

16 Q. So at some point Cole left the residence?

17 A. Yes.

18 Q. When did he leave?

19 A. I think when he had to go to work.

20 Q. Was Victoria home when he left?

21 A. Yeah.

22 Q. Did you ask -- or did he tell Victoria
23 about the incident when Cole was still there?

24 A. No.

25 Q. And you told Victoria that Cole couldn't

1 handle Yessenia?

2 A. Yeah.

3 Q. But Victoria continued to allow Cole to
4 babysit?

5 A. Yes.

6 Q. And Victoria didn't take Yessenia to the
7 doctor because of this incident; correct?

8 A. No.

9 Q. And you didn't call the police to report
10 this incident?

11 A. No.

12 Q. You didn't call Child Protective Services?

13 A. No.

14 Q. And you didn't even call Victoria
15 immediately to tell her about the incident; correct?

16 A. No. Because I think she was at work.

17 Q. Was she at work, or was she getting
18 presents for the kids?

19 A. No. I think she was at work. I don't
20 know. Because that's why she needed him to babysit.

21 Q. You didn't take any photographs of Yessenia
22 after the alleged incident --

23 A. No.

24 Q. -- document any injuries? Do you remember
25 when this incident occurred?

1 A. Uh-huh. The date, no. But I remember when
2 it happened or that day what happened.

3 Q. Do you remember the month that it occurred?

4 A. I'm going to say maybe December --
5 November, the end of November, beginning of December.

6 Q. You don't remember the day it occurred?

7 A. No. I don't remember the day exact.

8 Q. Was it in the morning, afternoon, or night?

9 A. It was in the afternoon. It had to be like
10 about 12:30ish, 1:30ish.

11 Q. So it was November or December, but you
12 said it was hot outside?

13 A. Yeah. But it was like -- yeah, during the
14 day, it was still warm.

15 Q. Warm enough that Yessenia could have
16 t-shirt and shorts on?

17 A. If she was outside playing at the park,
18 yeah.

19 Q. Do you still talk to Victoria?

20 A. Yes.

21 Q. How often?

22 A. Maybe once a month.

23 Q. When was the last time you spoke to her?

24 A. About five minutes ago.

25 Q. What about before that?

1 A. Maybe about two weeks ago.

2 Q. How did you hear about Yessenia's passing?

3 A. Oh, my goodness. My sister called me at
4 work.

5 Q. Do you know or do you remember roughly when
6 your sister called?

7 A. I remember it was early in the morning
8 before I was going to start work. I was about to
9 start my shift, and my sister called me and just told
10 me Yessenia is dead.

11 Q. Did you talk to Victoria after Yessenia
12 died?

13 A. Not right away. I think I got (inaudible).

14 Q. I'm sorry you talked to her?

15 A. Maybe like a couple of hours after. I had
16 to, like, get my thoughts together. I was at work
17 breaking down like hysterical like a maniac. I had to
18 have my house person escort me downstairs so that I
19 could get an Uber to go back to the house.

20 Q. Do you drink alcohol?

21 A. Not really. I have multiple sclerosis; so
22 I can't really drink because it messes me up.

23 Q. Do you use any illicit drugs?

24 A. I smoke medical marijuana because I don't
25 like opioids for my pain. But not like -- how you

1 say? -- social or whatever; more for my pain.

2 Q. Do you have a medical marijuana card?

3 A. Yes.

4 Q. How long have you had that?

5 A. Maybe about a month.

6 Q. Did you have a medical marijuana card when
7 this incident occurred?

8 A. No. I did not. You didn't need one here,
9 and if I'm disabled, I don't have any income.

10 Q. Did you smoke pot -- did you smoke
11 marijuana at that time?

12 A. Yes.

13 Q. Were you smoking on that day?

14 A. No. I was handling my business, my job
15 business and school business. I can't do that.

16 Q. Had you smoked marijuana the prior day?

17 A. Yeah.

18 MS. BOSKOVICH: Court's indulgence,
19 Your Honor.

20 Q. (By Ms. Boskovich) And you never made a
21 written statement regarding this incident?

22 A. No. Because I was here in Vegas and this
23 happened here.

24 Q. So you're basing all of your testimony
25 today strictly on memory?

1 A. Yes.

2 Q. Memory of an incident that occurred almost
3 four years ago?

4 A. Yes.

5 Q. And since there's no written statements,
6 you had nothing to refresh your memory here today?

7 A. No.

8 MS. BOSCOVICH: We'll pass the witness,
9 Your Honor.

10 MR. VITTO: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. VITTO:

13 Q. Kishanna, is the memory of what you
14 observed that day pretty much burned into your mind?

15 A. Completely.

16 Q. Did your use of marijuana the day before
17 what you saw at all interfere with your ability to see
18 the defendant dragging a screaming Yessenia through
19 the rocks and up the stairs?

20 A. No.

21 Q. Now, you testified that when you told
22 Victoria about what you saw, that she was picking up
23 Christmas wrapping paper?

24 A. Uh-huh.

25 Q. So I kind of just want to clear up: Was it

1 like Christmas wrapping paper that was torn off a
2 Christmas present, or was it Christmas paper used to
3 wrap a gift?

4 A. To wrap gifts maybe, yeah.

5 Q. Okay. Kishanna, how often would you
6 babysit Yessenia?

7 A. A lot.

8 Q. Every day? Every other day?

9 A. Well, we would work. Like, if she had to
10 work, I would watch her, you know, so on and so forth.
11 It was like a family.

12 Q. So in any given week, how many days in a
13 week would you be trusted to babysit Yessenia?

14 A. If I wasn't doing anything, any given day.

15 Q. Okay. She called you Te-Te?

16 A. Yes.

17 Q. Now, you lived with her so you saw Yessenia
18 every day?

19 A. Uh-huh.

20 Q. Who would babysit Yessenia more, you or the
21 defendant?

22 A. I think I would.

23 Q. More often?

24 A. Yeah.

25 Q. So you lived with her. So you saw her

1 every day. You babysat fairly frequently; would that
2 be fair?

3 A. Yes.

4 Q. And she was a pretty typical two-year-old?

5 A. Two-year-old.

6 Q. So how many times, Kishanna, did you have
7 to drag Yessenia by the arm through the rocks and up
8 the stairs screaming?

9 A. Never.

10 Q. That never happened, did it?

11 A. (Inaudible) to put her in her bed.

12 MR. VITTO: All right. I have no more
13 questions of this witness, Judge.

14 THE COURT: Anything else?

15 MS. BOSCOVICH: Nothing further.

16 THE COURT: All right. I don't know about
17 the propriety of this, but I have a couple of
18 questions. I'm still a little confused about the
19 semantics of dragged. Drag the child across the
20 rocks. You said he was holding her left hand?

21 THE WITNESS: Uh-huh.

22 THE COURT: Walking quickly or slowly?

23 THE WITNESS: Well, she was crying and
24 kicking and screaming. So he was dragging her across
25 the rocks to come into the house.

1 THE COURT: And it's the dragging part that
2 I'm looking for definition on. That's why I'm a
3 little confused, what dragging means. Because I
4 picture a caveman dragging a woman across the rocks by
5 her hair, or I'm picturing a man walking his child
6 across the rocks and you saying it's dragging when
7 he's just guiding the child. And I'm not sure of the
8 definition. That's why I'm asking you.

9 THE WITNESS: No. I mean dragging, because
10 she is throwing a tantrum or whatever, but he could
11 have picked her up. And I mean dragging like just
12 dragging her.

13 THE COURT: I think they asked you if she
14 was lifted off the ground.

15 THE WITNESS: No. He didn't pick her up
16 until --

17 THE COURT: Not even for a tenth of a
18 second as he's dragging her?

19 THE WITNESS: No. Until they started
20 coming up the stairs.

21 THE COURT: All right. And I think they
22 asked you if there were any marks and so forth, and at
23 one point the attorneys asked if there were any
24 injuries.

25 THE WITNESS: Right.

1 THE COURT: Were there any injuries or
2 marks? --

3 THE WITNESS: No, no injuries.

4 THE COURT: -- scrapes? blood? nothing?

5 THE WITNESS: No blood.

6 THE COURT: And curious, you observed that
7 incident. Did you observe any other incidents?

8 THE WITNESS: No.

9 THE COURT: At any time, any --

10 THE WITNESS: No.

11 THE COURT: -- interaction between the
12 defendant and the child that was beyond normal for
13 interaction with a two-year-old --

14 THE WITNESS: No.

15 THE COURT: -- little girl?

16 THE WITNESS: No.

17 THE COURT: Okay. Any other questions?

18 MR. VITTO: Nope.

19 THE COURT: Any other questions?

20 MS. BOSCOVICH: No, Your Honor.

21 THE COURT: All right. Thank you. You can
22 step down.

23 THE WITNESS: Thank you.

24 MR. VITTO: I will get my next witness,
25 Judge.

1 THE COURT: Are we going to do legal
2 argument one at a time or...

3 MR. VITTO: Oh, no.

4 MR. MARTINEZ: I think they're all
5 intertwined.

6 THE COURT: All right.

7 MR. VITTO: Do you have any objection to
8 her staying in the courtroom at this time? She's
9 been --

10 MR. MARTINEZ: I still would, because she's
11 still potentially a witness at trial.

12 MR. VITTO: I don't have a problem with
13 that. I'm just --

14 THE WITNESS: Where am I going?

15 THE BAILIFF: Make your way to the witness
16 stand, sir.

17 Please raise your right hand and face the
18 clerk.

19 Whereupon,

20 DR. JOHN LEPORE,
21 called as a witness on behalf of the State, was sworn
22 and testified as follows:

23 THE WITNESS: I do.

24 THE COURT: Thank you. Have a seat.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: Our previous witness was a
2 little soft-spoken so we had her remove the mask.
3 You're move than six feet from anybody; so if you
4 think you need to remove your mask to be heard
5 clearly, that's fine.

6 THE DEFENDANT: Thank you.

7 THE COURT: We'll wait for Mr. Vitto to
8 come back, and then he'll start asking you some
9 questions.

10 DIRECT EXAMINATION

11 BY MR. VITTO:

12 Q. Please state your name for the record,
13 spelling your last name.

14 A. John Lepore, L-e-p-o-r-e.

15 Q. And what is your occupation, sir?

16 A. I'm a pediatrician.

17 Q. And where do you currently practice?

18 A. In Summerlin, Las Vegas.

19 Q. And in the capacity as a pediatrician?

20 A. Yes, sir.

21 Q. How long have you been so employed?

22 A. Sixteen years.

23 Q. Tell us about your journey. How did you
24 get to be where you are today?

25 A. I came here from New York about 16 years

1 ago after I finished my residency in Long Island.
2 Prior to that, I was a currency broker for about seven
3 years; decided I didn't like that. Went back to
4 school and became a doctor.

5 Q. And is pediatrics a specialty of yours?

6 A. Yes, sir.

7 Q. All right. Let me show you State's

8 Proposed Exhibit 9. This is the (inaudible).

9 (Showing the exhibit to Defense Counsel.)

10 Q. (By Mr. Vitto) Okay. This is Exhibit 9.
11 I'm going to ask you to feel free to remove the clip,
12 go ahead and thumb through the pages of that exhibit.
13 When you've had the opportunity to review that, look
14 up and I will ask you some questions about it.

15 A. Okay.

16 Q. Do you recognize that, sir?

17 A. Yes, I do.

18 Q. And how do you recognize that?

19 A. This is a printout of a visit by my office.
20 This particular day was on December 29th.

21 Q. And the patient you recognize?

22 A. Yes, sir.

23 Q. All right. And basically, that's a report
24 that you create?

25 A. Yes, sir.

1 Q. All right. So that's a record of your
2 examination of Yessenia Camp on December 29th, 2016?

3 A. Correct. It includes the history of
4 present illness, a brief past medical history, and
5 then the chief complaint, my physical exam, my
6 findings.

7 Q. So what can you tell us about that
8 examination?

9 A. Well, I recall mom bringing Yessenia in
10 because she thought she had a rash or bug bites. Upon
11 physical exam, she did have some swollen glands in the
12 throat, which could go along with the rash. So we
13 were going to do a rapid strep test, which I believe
14 we did. When I did examine her, I did note that there
15 were bruising on her shins; nowhere else on her body
16 as I recall. We talked about the possibility of
17 bruising in a two- to three-year old on the shins.
18 It could be from bumping into things such like that.

19 I did question mom about if there was any
20 possibility of something going on at home because I
21 knew at that point she had been in the process of
22 divorcing. Mom was pretty confident that everything
23 was good. She told me at that point the past love of
24 her life was watching the child for her. She
25 explained to me that they had been very close in high

1 school, separated. They met up again after both were
2 divorced and came together. I remember it very
3 vividly, because I jokingly said to her, "You didn't
4 give me a chance at you."

5 Q. I got you. All right. Now, certainly it's
6 not uncommon for a two-year-old child to have bruises
7 to her legs or shins; is that correct?

8 A. That's correct.

9 Q. Was this something different?

10 A. Well, mom had come in with a complaint of
11 it being bug bites. And then with the sore throat, I
12 wanted to rule out that if this was a scarlet fever or
13 strep related rash, which we did rule out. She did
14 not mention any bruising anywhere else on the body,
15 nor did I see any. We discussed things like was she
16 having significant nosebleeds, bleeding gums; and
17 brushed her teeth to make sure nothing cancerous like
18 leukemia involved. And again as I stated, I did
19 question if there was any possibility of somebody
20 hurting her.

21 Q. So your finding in relation to the bruises
22 themselves, is that included in that report?

23 A. Yes, it is. On the physical exam, I did
24 note that she had purpura, which purple marks on her
25 legs and ankles which would be considered -- purpura

1 is a fancy word for a bruise.

2 Q. Okay. And you -- and that indicates it was
3 ankles and --

4 A. Her lower legs.

5 Q. -- her lower legs, shins. And it caused
6 you enough concern to where you asked, specifically
7 asked her if anybody could be abusing the child?

8 A. Yes, absolutely.

9 Q. Can I see that report, Doctor?

10 A. Absolutely.

11 Q. Thank you, sir. And you make a -- probably
12 butcher these words -- hematalogic/lymphatic
13 conclusion.

14 A. Yes. That was the swollen glands in her
15 lymph nodes, and the note of excessive bruising would
16 fall under that category, positive.

17 Q. Oh, I understand. So it's positive for
18 excessive bruising?

19 A. Correct.

20 Q. So you found this bruising to be excessive?

21 A. It was out of the norm because there are
22 more there than you would normally see.

23 Q. With a normal two-year-old that would bump
24 her leg?

25 A. Correct. Two year olds often have bruises

1 on the shins because they bump into everything because
2 they're klutzy. But this seemed a little more, and I
3 wanted to ensure that it was not, again, something
4 cancerous or some other lesions.

5 Q. Okay. And did you let Victoria know that
6 should you see something like this again, you would be
7 obligated to report it?

8 A. Yes.

9 MR. VITTO: All right. I have no more
10 questions of this witness at this time, Your Honor.
11 For the purposes of this hearing, I would ask that
12 State's Proposed Exhibit 9 be admitted into evidence.

13 MR. MARTINEZ: Judge, I would just like a
14 little bit more foundation about where the report came
15 from, how it was printed, chain of custody -- those
16 sorts of things.

17 THE COURT: You want Mr. Vitto to do the
18 foundation, or you want to do it?

19 MR. MARTINEZ: It's his exhibit, Judge.

20 THE COURT: I know. I thought you were
21 being helpful.

22 MR. MARTINEZ: No. Not that helpful.

23 MR. VITTO: Your Honor, I don't think
24 that's necessary. This witness has testified that
25 it's authentic. He remembers it. He recognizes it.

1 In fact, he remembered the visit vividly.

2 THE COURT: What was the date on it, Kirk?

3 MR. VITTO: It's under date. December 29,
4 2016, three-and-a-half years ago.

5 THE COURT: December 29, 2016.

6 MR. VITTO: Yes, Judge.

7 THE COURT: Any other objection?

8 MR. MARTINEZ: No, Judge.

9 THE COURT: All right. It's admitted.
10 (Whereupon State's Exhibit No. 9 was
11 admitted into evidence.)

12 MR. VITTO: Thank you, Your Honor.

13 THE COURT: Did we admit 15 and 16?

14 MR. VITTO: I haven't moved those yet. I
15 was going to move those with Victoria, because she's
16 the one that took the photographs.

17 THE COURT: That will be fine.

18 Any cross-examination?

19 MR. MARTINEZ: Yes, Judge. Thank you.

20 CROSS-EXAMINATION

21 BY MR. MARTINEZ:

22 Q. Good afternoon, Doctor?

23 A. Good afternoon.

24 Q. Doctor, I guess I will start with the
25 report. You testified that you do have a pretty vivid

1 memory of this visit; right?

2 A. Yes, I do.

3 Q. Did you review anything other than your
4 report prior to today?

5 A. No.

6 Q. Do you keep any other records other than
7 the report?

8 A. No. Whatever is in the medical record or
9 signed off electronically, that's it. I can't add to
10 it later on without specifically noting on the bottom
11 of the reports as an addendum, which was not added on
12 that one.

13 Q. Now, are you licensed specifically in
14 Nevada to practice?

15 A. Yes, I am.

16 Q. And you said you've been practicing about
17 16 years now?

18 A. Yes, sir. I'm also board certified in
19 pediatrics.

20 Q. And your specialization you said is
21 pediatrics; right?

22 A. Yes, sir.

23 Q. To make the record clear, because I'm not
24 as smart as I think I am, pediatrics means a doctor
25 for kids; right?

1 A. Correct. Newborns up to 18 to 21 years of
2 age depending on the scope.

3 Q. Great. Now, in your training and in your
4 experience, did you learn about mandatory reporting?

5 A. Yes, sir.

6 Q. And are you a mandatory reporter?

7 A. Yes, sir.

8 Q. What does that mean?

9 A. If I have strong enough suspicion that
10 there is abuse going on, be it physical, emotional,
11 sexual, I'm mandated to report to the Child Protective
12 Services.

13 Q. And that's pursuant to Nevada law; right?

14 A. I believe it is. Yes, sir.

15 Q. And if you didn't report it, what would
16 happen?

17 A. I honestly don't know. If I feel there's
18 something strong enough, I report it.

19 Q. After this visit with Yessenia, you did not
20 report it; right?

21 A. No, I did not.

22 Q. So you didn't feel strongly enough that
23 there was any abuse going on?

24 A. I felt confident in mother's responses to
25 me that everything seemed okay.

1 Q. All right. Now, you mentioned that in your
2 report, you refer to the bruises as purpura; correct?

3 A. That's correct, yes.

4 Q. What is the difference between purpura and
5 a contusion?

6 A. Purpura is a big bruise that doesn't
7 blanch, whereas a contusion can blanch. They're
8 essentially the same thing. Purpura you sometimes
9 have to be weary of something like say meningitis.
10 It's more of -- it can be vasculitis.

11 Q. Let me stop you for a second. What does
12 "blanch" mean?

13 A. If you pull on it, it will change color.

14 Q. Okay. Was this the last time that you saw
15 Yessenia Camp?

16 A. I believe it was, yes. I would have to
17 check my records.

18 Q. And I guess I will ask the question a
19 different way. This was the last time you
20 specifically, you personally saw Yessenia Camp?

21 A. I believe it was, yes.

22 Q. Okay. Do you know if your office ever saw
23 her again.

24 A. I believe there was another note attached
25 to that, that I was looking through, that one of my

1 former partners had seen her for an upper respiratory
2 illness.

3 Q. Do you know if any bruising was noted at
4 that next hear -- or the next visit?

5 A. I didn't note it on Dr. Enkel's (phonetic)
6 report; so I assume she didn't notice.

7 Q. And to your knowledge -- and I guess let me
8 ask that a different way. Are you employed -- do you
9 own Kidfixers?

10 A. Yes, I do.

11 Q. And you have multiple other doctors that
12 work there.

13 A. I did. I'm down to myself and one other
14 partner right now.

15 Q. But at the time in late-2016 going into
16 2017, there were others working there?

17 A. There was three or four. I don't remember
18 exactly.

19 Q. So you wouldn't see, personally see every
20 patient that came in?

21 A. No. That's correct.

22 Q. At the end of every visit, you give your
23 patients directions for follow-up?

24 A. Absolutely.

25 Q. Including directions if things get very

1 severe very quickly?

2 A. Correct.

3 Q. That they should call you immediately?

4 A. Correct.

5 Q. Or call 911?

6 A. Or go to the ER, yes.

7 Q. And you didn't hear immediately from
8 Victoria; right?

9 A. No. No, I don't believe so.

10 Q. So that would lead us to conclude nothing
11 got more severe with Yessenia after this; right?

12 A. Nothing got more severe with her sore
13 throat for certain. I don't know anything else after
14 that.

15 Q. Did she also have a fever?

16 A. I don't believe she did. I think on exam I
17 just noticed the red throat, some swollen glands in
18 her neck, and swabbed her for strep I believe, if I
19 recall properly. Her brother Dwight used to get a lot
20 of strep throats so...

21 Q. Now, under the subheading on the first page
22 of the reports there in front of you, the subheading
23 HPI, there's a line, third line down. It says,
24 "Recent rash, bumps and bruises on legs," question
25 mark, "bug bites, one week." Does that mean they've

1 been present for one week?

2 A. For a week, yes.

3 Q. And that was as reported to you by
4 Victoria?

5 A. Correct. The history of present illness is
6 my taking, my doing the investigation to find out what
7 it is, what I need to look for. And then the physical
8 exam is my actual conclusion of what I saw.

9 Q. And Victoria told you that Yessenia had
10 come back from her father; correct?

11 A. I believe so, yes.

12 Q. And that's when she noticed the bruises?

13 A. I believe so, yes.

14 MR. MARTINEZ: Pass the witness,
15 Your Honor.

16 THE COURT: Mr. Vitto?

17 MR. VITTO: I have nothing further,
18 Your Honor.

19 THE COURT: Just a couple of quick
20 questions. Did I hear you say that she in fact did
21 have strep throat?

22 THE WITNESS: No, she did not. I checked
23 her for it. Her rapid strep was negative, and the
24 (inaudible) culture coming back later was negative
25 too.

1 THE COURT: And you mentioned that there
2 was another visit you saw in the report from another
3 doctor.

4 THE WITNESS: Right. There was one that --

5 THE COURT: Was that before or after
6 your --

7 THE WITNESS: I believe it was after. It
8 was 2017, if I remember the date.

9 THE COURT: Oh, okay. And the mom brought
10 her in because of the rash?

11 THE WITNESS: Mom brought her in with a
12 chief complaint of bug bites.

13 THE COURT: Bug bites.

14 THE WITNESS: Bug bites, slash, rash. I
15 mean the girls at the front take a phone call, and if
16 mom says, "I think she's got bug bites," they will put
17 down bug bites or rash. And then when they come in,
18 we kind of go from there.

19 THE COURT: And that's why she brought her
20 in?

21 THE WITNESS: Correct.

22 THE COURT: And then you observed the
23 bruises?

24 THE WITNESS: Correct.

25 THE COURT: All right. Very good.

1 Anything else, Mr. Vitto?

2 MR. VITTO: No, Your Honor.

3 THE COURT: Defense?

4 MR. MARTINEZ: Nothing, Judge.

5 THE COURT: All right. Thank you, sir.

6 You can step down.

7 May he be excused?

8 MR. VITTO: Yes Your Honor.

9 THE COURT: Thank you.

10 MR. VITTO: Thank you, Dr. Lepore. We'll
11 be in touch.

12 THE WITNESS: Okay.

13 MR. VITTO: Your Honor, before I call my
14 next witness, who will be relatively brief I believe,
15 I would like to discuss what had been preliminarily
16 marked as State's Proposed Exhibit 13. It's a report
17 from the Nevada Attorney General High Tech Crimes
18 Unit. It's a report prepared by Mr. DeFonseka,
19 Chris DeFonseka, their computer forensic specialist.

20 Mr. Fonseka (sic) can't be here today for
21 the same reason that Alexander Fernandez cannot be
22 here tomorrow. Be that as it may, this exhibit, this
23 report is still -- well, the Defense has stipulated to
24 the admission of this report. That stipulation has
25 not been disavowed by current Defense Counsel. And I

1 explained to them that I'm not going to hold them to a
2 stipulation. This is a Murder case. I'm not going to
3 hold them to a stipulation that another attorney made
4 in that regard, and I won't.

5 At any point, if they come up and they say,
6 "Hey, tear up that stip. We can't abide by that,"
7 that's fine. Okay. We'll go forward. But to this
8 point they haven't. And there's a stipulation
9 admitting this analysis. I think for the purposes of
10 this hearing, it should be admitted. It's State's
11 Proposed Exhibit 13.

12 The facts to the report -- and this is
13 something that Counsel and I touched on when last we
14 were before the court -- we're not so much -- the
15 Defense is not so much challenging the facts and what
16 it is that the State is alleging, as much as they are
17 the standard that the State has to meet and their
18 legal admissibility.

19 So I would like to address the facts of
20 this report, and it's as basic and easy as this. The
21 report indicates that Chris DeFonseka found -- and I'm
22 just going to read it exactly -- "Examination of the
23 searched" -- no. "Examination of the extracted
24 pictures found approximately ten pictures of a blond
25 girl around three or four years of age with bruises

1 and cuts on her face and parts of her upper body." So
2 he found these pictures. And these photographs,
3 Judge, are State's Proposed Exhibits 1 through 7. We
4 have seven photographs that we'll be seeking to admit
5 for purposes of this hearing.

6 So why did the report say ten when the
7 State is only going to be seeking to admit seven, and
8 that's because three of those were exact duplicates;
9 they were the same picture. There are only seven
10 individual photographs that were recovered, three of
11 them are duplicates. We will be calling testimony in
12 regard to those photographs.

13 There was also the metadata. And the
14 metadata in regard to the Extraction Report for these
15 photographs is what I'll be calling Mr. Arms, our next
16 witness, to address. But at this point, Judge, I
17 would ask that State's Proposed Exhibit 13, and a
18 separate exhibit for the -- and the Extraction Report
19 being marked as a separate exhibit be admitted into
20 evidence.

21 MR. MARTINEZ: That was a lot of words to
22 say that we've stipulated to admission of this exhibit
23 for purposes of this hearing only, Your Honor.

24 THE COURT: Purpose of this hearing only,
25 yes.

1 MR. VITTO: Absolutely, absolutely.

2 THE COURT: Very good. Thank you.

3 THE CLERK: Do you have an exhibit number
4 for the metadata?

5 MR. VITTO: I haven't. I haven't got it
6 marked yet. So it will be next in line, and State's
7 next in line is 17, the metadata that has not been
8 marked yet.

9 THE CLERK: Yeah, 17.

10 (Whereupon State's Exhibit No. 17
11 is marked for identification and admitted
12 into evidence; State's Exhibit No. 13
13 is admitted into evidence.)

14 MR. VITTO: And, Judge, I will get my next
15 witness who is Mr. Todd Arms. And he's probably in
16 his office.

17 THE COURT: We're off the record for a
18 moment.

19 (Off the record.)

20 THE COURT: Back on the record.

21 MR. VITTO: We're going to go ahead and
22 excuse Kishanna.

23 MS. BOSKOVICH: Yes.

24 THE BAILIFF: Would you please raise your
25 right hand and face madam clerk.

1 Whereupon,

2 INVESTIGATOR TODD ARMS,
3 called as a witness on behalf of the State, was sworn
4 and testified as follows:

5 THE DEFENDANT: I do.

6 THE COURT: Thank you, Todd. Have a seat.

7 And some of the witnesses, they're
8 soft-spoken, we have them take the mask off. We're
9 six feet away so it should be safe. If you can talk
10 loud enough that everybody can hear you, that's fine.
11 Keep it on.

12 THE WITNESS: Okay.

13 DIRECT EXAMINATION

14 BY MR. VITTO:

15 Q. Mr. Arms?

16 A. Yes, sir.

17 Q. Please state your name for the record
18 spelling your last name?

19 A. Todd Arms, A-r-m-s.

20 Q. And what is your occupation, sir?

21 A. I'm an investigator with the Nye County
22 District Attorney's Office.

23 Q. How long have you been doing that job?

24 A. For over 16 years.

25 Q. Thata boy. And how long have you been in

1 law enforcement?

2 A. For almost 21.

3 Q. All right. Now, let me show you State's
4 Proposed Exhibits 1 through 7? Investigator, I would
5 like you to take your time, familiarize yourself with
6 those photographs. When you've had that opportunity,
7 look up, and we'll ask you some questions about them?

8 A. Okay.

9 Q. Do you recognize those photographs?

10 A. I do.

11 Q. And how do you recognize those photographs?

12 A. From a case that I have helped work on
13 that's within our office.

14 Q. Okay. And you've had opportunity to review
15 those and look into the metadata regarding those?

16 A. I have, yes.

17 Q. And those were the photographs that were
18 recovered from the defendant's phone?

19 A. Correct, per the report from the
20 forensic -- from Chris DeFonseka.

21 Q. All right. So let me show you State's
22 Proposed Exhibit 13. You've had the opportunity to
23 familiarize yourself with that report?

24 A. Not this report specifically. I
25 familiarized myself with the ten images and the

1 metadata that was with those imagines, but --

2 Q. I understand.

3 A. -- I wish I could read through this real
4 quick and then.

5 Q. No, no, no, that's okay. You familiarized
6 yourself with the Extraction Report?

7 A. I did, yes.

8 Q. And that would be State's Exhibit 17?

9 A. Yes.

10 Q. All right. So the -- what you have before
11 you is State's Exhibit 17. That's the stored --
12 that's what they call the metadata?

13 A. That's how I refer to it as.

14 Q. The stored data. Now, what you have down
15 there is -- or what you have in front of you is
16 State's Exhibit 1 through 7. Are each one of those
17 photographs contained within the Extraction Report?

18 A. They do appear to be the same, correct.

19 Q. So in regard to what we have preliminarily
20 marked as State's Proposed Exhibit 1, according to the
21 metadata, when was that photograph taken by the
22 defendant's phone?

23 A. Do you want me to --

24 MR. MARTINEZ: I'm going to object as to
25 foundation at this time, Your Honor. I don't think

1 it's been testified to that it was a photograph taken
2 by the defendant's phone.

3 MR. VITTO: That's fine. I can go on.

4 Q. (By Mr. Vitto) What date was that
5 photograph taken by a phone?

6 A. Per this report, it was on April 3rd, 2017.

7 Q. And how about State's Proposed Exhibit 2?

8 A. The same, April 3rd, 2017.

9 Q. And moving on to 3?

10 A. That one is for February 2nd, 2017.

11 Q. And 4?

12 A. And that one is for June 25th, 2017.

13 Q. And 5?

14 A. That one's April 7th, 2017.

15 Q. And 6?

16 A. Same, April 7th, 2017.

17 Q. And the last one, 7?

18 A. That one's for May 30th, 2017.

19 Q. Perfect.

20 MR. VITTO: I have no more questions of
21 this witness at this time.

22 CROSS-EXAMINATION

23 BY MR. MARTINEZ:

24 Q. Good afternoon, Mr. Arms.

25 A. Good afternoon.

1 Q. On the Extraction Report here, next to the
2 dates when all of these pictures were taken, there's a
3 timestamp; right?

4 A. Correct.

5 Q. That time next to it says UTC; right?

6 A. Correct.

7 Q. What does "UTC" stand for?

8 A. I do not have an answer for you.

9 Q. All right. So you don't know if that's our
10 time zone; right?

11 A. I know GMT for Greenwich Mean Time, but as
12 far as UTC, I don't know.

13 Q. So you don't know how that compares to
14 Pacific Standard Time; right?

15 A. True.

16 Q. And now did you produce this Extraction
17 Report, Mr. Arms?

18 A. I did not, no.

19 Q. Have you reviewed the findings in it to see
20 if it is correct in any way?

21 A. I'm sure I have reviewed the report, but as
22 far as any recollection of memory of it, I don't. So
23 I don't have an answer for you.

24 MR. MARTINEZ: Nothing further, Judge.

25 THE COURT: Mr. Vitto?

1 MR. VITTO: Nothing further, Judge.

2 THE COURT: Thank you, Todd. You can step
3 down. Thank you for testifying.

4 MR. VITTO: Okay. Victoria.

5 THE BAILIFF: Please raise your right hand
6 and face the clerk.

7 Whereupon,

8 VICTORIA SCHLICK,
9 called as a witness on behalf of the State, was sworn
10 and testified as follows:

11 THE DEFENDANT: Yes.

12 THE COURT: Thank you have a seat. We're
13 recording this. We're going to have you talk into the
14 microphone. Some people talk, soft and we have them
15 remove the mask so we can hear them better. Some are
16 loud and would rather leave the mask on. So we'll see
17 how you go. We might have to ask you to take it off.

18 All right. Mr. Vitto.

19 DIRECT EXAMINATION

20 BY MR. VITTO:

21 Q. Victoria, please state your name, spelling
22 your last name for the record.

23 A. Victoria Schlick, S-c-h-l-i-c-k.

24 Q. And what is your occupation, ma'am?

25 A. General merchandise manager at Albertsons.

1 Q. And you work in Las Vegas?

2 A. Yes.

3 Q. Victoria, how many children have you had?

4 A. Three.

5 Q. And what are their names and birth dates?

6 A. Nicole Corine (phonetic), 10/2/02;

7 Dwight Reed, 9/20/07; Yessenia Violet, 1/6/14.

8 Q. Let me show you State's Proposed

9 Exhibits 15 and 16 to start off with. Victoria, do
10 you recognize those photographs?

11 A. Yes.

12 Q. What can you tell me about them?

13 A. The balcony was where I lived.

14 Q. And where is that at?

15 A. Lake Mead and Hollywood in Las Vegas.

16 Q. And Kishanna has already testified about
17 those photographs. And who took those photographs?

18 A. I did.

19 Q. Are they accurate?

20 A. Yes.

21 Q. Okay. When did you take those photographs?

22 A. Last week.

23 Q. Okay. Frequent -- or not too long ago?

24 A. Recently.

25 Q. Recently, thank you.

1 Now, when did you live in that condominium,
2 from when to when?

3 A. 2016 -- I can't remember when I moved in --
4 until when I moved out in May of 2017.

5 Q. Okay. So when did you and Cole Engelson
6 rekindle your relationship?

7 A. September of 2017.

8 Q. All right. So with that as -- September of
9 what year?

10 A. '16, I'm sorry. '16.

11 Q. With that as a reference point, does that
12 help you recall when you moved into that condominium?

13 A. August, I believe, or before.

14 Q. Okay. So you believe you moved into the
15 condominium --

16 A. It was before we rekindled, yeah. I was
17 already there.

18 Q. All right. So you were there for Halloween
19 2016, Thanksgiving 2016, and Christmas 2016?

20 A. Yes.

21 Q. And you moved out in May of 2017?

22 A. Yes.

23 Q. Why was that?

24 A. I moved to Pahrump with Cole.

25 Q. You moved to Pahrump with Cole and who

1 else?

2 A. My -- our -- well, his child and my two
3 children.

4 Q. Your two children. Which two?

5 A. Yessenia and Dwight.

6 Q. Now, Victoria, let me show you -- did I say
7 Yessenia? I'm sorry, Victoria.

8 A. No. You said Victoria.

9 Q. I did; okay. I'm going to show you some
10 pictures of your little girl, okay. I'm going to show
11 you State's Proposed Exhibits 1 through 7. I want you
12 to take your time. I want you to go through these
13 photographs, and when you've had an opportunity to
14 review them, look up, and we're going to have to ask
15 you some questions about them; okay?

16 A. (The witness complies.)

17 Q. Have you had opportunity to review those?

18 A. (The witness nods.)

19 Q. Is that a "yes"?

20 A. Yes.

21 Q. And I'm sorry, Victoria. The court
22 reporter has to type down?

23 A. I understand.

24 Q. Have you seen those photographs before?

25 A. Yes.

1 Q. Where did you see those photographs?

2 A. From text messages.

3 Q. Okay. Text messages?

4 A. And from being shown.

5 Q. From being shown? So the first time you
6 saw those photographs was by text messages?

7 A. One of them.

8 Q. And which one was that?

9 A. Well, actually a couple of them. The chin,
10 and then the one where she's throwing a fit on the
11 bed.

12 Q. Okay. So the chin, I need -- if you look
13 on the back of those photographs, you will notice that
14 they have numbers. If you could look on the back of
15 the chin photo that was texted to you, what number is
16 that?

17 A. One --

18 Q. So --

19 A. -- and 2.

20 Q. So State's Proposed Exhibits 1 and 2 were
21 texted to you?

22 A. Yes.

23 Q. By who?

24 A. Cole.

25 Q. Do you see Cole in the courtroom today?

1 A. Yes.

2 Q. Can you describe an article of clothing
3 that he's wearing?

4 A. Orange shirt.

5 MR. VITTO: Your Honor, may the record
6 reflect that this witness has identified the
7 defendant?

8 THE COURT: Yes, it will.

9 Q. (By Mr. Vitto) And what other picture was
10 texted to you by the defendant?

11 A. No. 7.

12 Q. All right. Did you ever see these
13 photographs on his phone?

14 A. No.

15 Q. But he texted them to you, or three of them
16 at least?

17 A. Yes.

18 Q. Now, starting with 1, what can you tell me
19 about that photograph?

20 A. I got the photograph with him telling me
21 that she slipped off the counter. I was at work, and
22 that's why it was texted to me.

23 Q. All right. And where was that photograph
24 taken?

25 A. In my apartment bathroom.

1 Q. And when you say your apartment bathroom,
2 are you referring to the same condominium?

3 A. Yes.

4 Q. All right. So it's the condominium where
5 you lived with Kishanna?

6 A. Yes.

7 Q. And do you have a recollection of when that
8 photograph was taken?

9 A. Yeah. It was before Christmas.

10 Q. As a result of that photograph, or as a
11 result -- well, let me ask you this: This photograph
12 was texted to you. What did you do after you saw that
13 photograph?

14 A. I left work.

15 Q. Okay. And where did you go after you left
16 work?

17 A. I went home and picked her up and took her
18 to UMC Quick Care.

19 Q. Okay. So you took her to seek medical
20 attention?

21 A. Yes.

22 Q. All right. Let me show you State's
23 Proposed Exhibit 8.

24 (Mr. Vitto shows Defense Counsel the
25 exhibit.)

1 Q. (By Mr. Vitto) Take your time, go through
2 that exhibit. When you're ready, I will ask you some
3 questions about it.

4 A. Okay.

5 Q. Have you had opportunity to review that?

6 A. Yes.

7 Q. Does it look familiar?

8 A. Yes.

9 Q. In fact, you have a copy of those documents
10 with you, don't you?

11 A. Yes.

12 Q. I don't mean with you as we speak, but --

13 A. I do. They are in her file that I keep.

14 Q. And you still have them?

15 A. Yes.

16 Q. In fact, originally I think you gave me a
17 copy of your copy; is that correct?

18 A. Yeah.

19 Q. And what number is that on the back,
20 Victoria?

21 A. No. 8.

22 Q. All right. So what is Exhibit 8?

23 A. It's the copy of the paperwork when I took
24 her to UMC Quick Care and the aftercare of her
25 laceration on her chest.

1 Q. Okay. So those are the medical records
2 that are consistent with the photograph that you
3 received by text from the defendant that is State's 1
4 and 2?

5 A. Yes.

6 Q. She hurt her chin; you took her to the
7 doctor?

8 A. Yes.

9 Q. Is there a date of that doctor visit on
10 that document?

11 A. Yes. It's April 2nd, 2017.

12 Q. Does that help you remember when you
13 received those text photographs from the defendant?

14 A. Yes.

15 Q. And when was that?

16 A. In April.

17 Q. Of what year?

18 A. 2017.

19 Q. Victoria, was the defendant alone with
20 Yessenia when State's Proposed Exhibits 1 and 2 were
21 taken?

22 A. Yes.

23 Q. And was he alone with Yessenia the day she
24 died?

25 A. Yes.

1 Q. When that picture was taken, when he was
2 home alone with her, was he drinking that day?

3 A. Yes.

4 MR. MARTINEZ: Objection; foundation,
5 Judge.

6 MR. VITTO: I can ask some follow-up
7 questions?

8 THE COURT: Thank you, sir.

9 MR. VITTO: Thanks.

10 Q. (By Mr. Vitto) Was he babysitting that
11 day?

12 A. Yes.

13 Q. So he was babysitting both days, the day
14 that she hurt her chin and the day that she died?

15 A. Yes.

16 Q. And now, you said that he had been drinking
17 the day that she hurt her chin; how do you know that?

18 A. He came home from work. Because of his
19 actions.

20 Q. You could tell?

21 A. Yes.

22 Q. So you've been around him when he drinks?

23 A. Yes.

24 Q. You know what he's like when he drinks?

25 A. Yes.

1 Q. And you know what he's like when he's
2 drunk?

3 A. Yes.

4 Q. So you could tell that when he came from
5 work to babysit Yessenia that he had been drinking?

6 A. Yes.

7 MR. MARTINEZ: Still object as to
8 foundation there, Judge. I think it's her opinion he
9 had been drinking, but we don't have any confirmation
10 of that.

11 MR. VITTO: I think it's enough, but I'll
12 ask some more questions, because I like asking
13 questions.

14 Q. (By Mr. Vitto) Did he say whether he had
15 been drinking?

16 A. I can't remember.

17 Q. Now, have you seen him come home from work
18 before when, in your opinion, he hadn't been drinking?

19 A. Yes.

20 Q. And you've seen him come home from work
21 before where, in your opinion, he had been drinking?

22 A. Yes.

23 Q. So you know the difference?

24 A. Yes.

25 Q. What time did he get home?

1 A. I had to be at work by 8:00; so it was
2 7:00ish, around 7:30.

3 Q. So he got home about 7:00 or 7:30 that
4 morning, and he understood it was his obligation to
5 babysit because you had to go to work?

6 A. Yes.

7 Q. Was anybody else home?

8 A. No.

9 Q. Could you smell alcohol on him?

10 A. I don't remember.

11 Q. All right. What about the way he was
12 acting indicated to you that you knew that he had been
13 drinking?

14 A. His speech.

15 Q. His speech was like he had been drinking?

16 A. Yeah.

17 Q. All right. How about his attitude?

18 A. He always gets happy-go-lucky when he's
19 been drinking; so it's more of a hey kind of attitude.

20 Q. So he was loose.

21 A. Yeah.

22 Q. Do you know anything about his drinking the
23 day Yessenia died?

24 A. I don't understand the question.

25 Q. Okay. Let me direct your attention to the

1 day Yessenia died.

2 A. Yes.

3 Q. Did you see him drink?

4 A. No.

5 Q. Did he say anything about drinking?

6 A. No.

7 Q. Were the two of you having any kind of
8 particular disagreement the day that Yessenia died?

9 A. We were bickering at each other.

10 Q. And was there a particular reason why you
11 were bickering at each other?

12 A. Because jealousy was showing itself.

13 Q. And jealous of what?

14 A. My best friend Steve, him picking up my
15 son, and my son getting special treatment from Steve.

16 Q. Do you guys keep a liquor cabinet?

17 A. I did.

18 Q. Because at the time Yessenia died, the two
19 of you were living together here in Pahrump?

20 A. Yes.

21 Q. Do you remember at one point seeing him
22 with a glass and checking that glass or cup?

23 A. Yes.

24 Q. Can you describe that?

25 A. It was one of our pint glasses that we had,

1 and it had clear liquid in it. I picked it up, and I
2 smelled it. It was water.

3 Q. Did you say anything to him when you did
4 that?

5 A. Yes.

6 Q. What did you say to him?

7 A. "Stop fucking with me."

8 Q. And what did you mean by that?

9 A. Because he was indicating that he was
10 drinking.

11 Q. Now, Victoria, the time that we see
12 manifest in these photographs 1 and 2, the time that
13 she hurt her chin, did he complain of blackouts that
14 day?

15 A. The day she hurt her chin?

16 Q. Yes.

17 A. No.

18 Q. Have you ever been in his presence or in
19 his company when he experienced a blackout?

20 A. No.

21 Q. And you seen him drink?

22 A. Yes.

23 Q. Plenty of times?

24 A. Heavily.

25 Q. And you've seen him drunk?

1 A. Yes.

2 Q. Does he have a high tolerance for alcohol?

3 A. Yes.

4 Q. When you've seen him drunk, have you seen
5 him be able to accurately recall events after
6 drinking?

7 A. Yes.

8 Q. Tell you stories?

9 A. Yep.

10 Q. Stories about work?

11 A. Yes.

12 Q. Now, in regard to State's Proposed Exhibits
13 1 and 2, that incident, early April 2017, did he tell
14 you what happened that caused her to get that gash on
15 her chin?

16 A. Yes.

17 Q. What did he say happened?

18 A. He said she stepped back and slipped.

19 Q. What had happened just prior to her
20 stepping back and slipping?

21 A. He had given her a shower.

22 Q. Okay.

23 A. It was early in the morning, and he had
24 given her a shower.

25 Q. So the day she hurt her chin, he was alone

1 with Yessenia and he gave her a shower?

2 A. Yes.

3 Q. And the day that Yessenia died, he was home
4 alone with Yessenia and he gave her a shower?

5 A. Yes.

6 Q. Did he give you any other detail -- you
7 said that he mentioned stepping back and falling.
8 Stepping back from what or falling from what; did he
9 give you any more detail?

10 A. She was standing on the vanity in the
11 bathroom, the countertop in the bathroom brushing her
12 hair.

13 Q. After getting out of the shower?

14 A. Yes.

15 Q. And that's when she fell and hurt her chin?

16 A. Yes.

17 Q. Had she turned three yet?

18 A. Yes.

19 Q. What's her birth date?

20 A. 1/4 -- I mean I'm sorry, 1/6/14.

21 Q. Okay.

22 A. She was just turned three that month or
23 that January.

24 Q. All right. Victoria, are you aware that on
25 the day she died, he said he had thrown her in the

1 shower? You hadn't heard that before?

2 MR. MARTINEZ: I'm going to object to
3 foundation there, Judge.

4 MR. VITTO: I'm just asking her if she's
5 aware of it, had she heard it. Not saying it even
6 happened.

7 MR. MARTINEZ: That's the foundation -- can
8 I have a ruling on the objection, Judge. That's the
9 foundation for the question. We don't have any
10 testimony that that was said, no report that that was
11 said, nothing along those lines.

12 THE COURT: I will sustain it.

13 MR. MARTINEZ: Thank you.

14 MR. VITTO: Thank you, Your Honor.

15 Q. (By Mr. Vitto) Are you aware that the
16 defendant said that on the day Yessenia died, he was
17 drying her off on the counter top?

18 MR. MARTINEZ: Again, same objection,
19 Judge; foundation.

20 THE COURT: You're asking the witness if
21 the defendant told her that he was drying her off on
22 the vanity countertop?

23 MR. VITTO: I was asking if she was aware
24 that on the day Yessenia died that he was drying her
25 off on the countertop, yes.

1 THE COURT: Overruled.

2 MR. MARTINEZ: And, Judge, it would be
3 foundation, and it may lead into hearsay as well.
4 Because if Victoria is aware of this, but she found
5 out from somebody other than Cole, then we have a
6 hearsay -- then it's a hearsay objection as well.

7 THE COURT: I think in my mind I'm running
8 an open question more through my head than the direct
9 one Mr. Vitto asked, which is what information do you
10 have about when the death occurred, what occurred that
11 day.

12 MR. VITTO: That's correct, Judge.

13 THE COURT: And that's what I'm running
14 through my head for the answer. I agree with you that
15 Kirk may have led her a little bit on the more
16 specific question. I will sustain the leading
17 question.

18 MR. VITTO: Thanks, Judge.

19 MR. MARTINEZ: Thank you, Judge.

20 Q. (By Mr. Vitto) Now, you had opportunity to
21 speak with the defendant after Yessenia died; is that
22 correct?

23 A. Yes.

24 Q. Do you remember asking the defendant if
25 Yessenia was fighting him?

1 A. Yes.

2 Q. Do you remember what he said?

3 A. Yes.

4 Q. What did he say?

5 A. That yeah, they were going at it, like she
6 normally -- like they normally would do.

7 Q. Okay. So in both situations when she
8 gashed her chin and when Yessenia died, the defendant
9 was home alone with Yessenia; correct?

10 A. Yes.

11 Q. And in your opinion, the defendant had been
12 drinking?

13 A. Yes.

14 Q. And the defendant had given Yessenia a
15 shower?

16 A. Yes.

17 Q. Now, Victoria, I believe I've shown you
18 this before. I'm going to show you State's Proposed
19 Exhibit 10. Victoria, have you seen the injury to
20 Yessenia's chin the day she died?

21 A. (The witness nods.)

22 Q. I don't recall off the top of my head if
23 I've shown you that picture before.

24 A. Yes.

25 Q. You've seen that; okay. So let me show you

1 State's Proposed Exhibit 10. Victoria, did you see
2 Yessenia in the hospital?

3 A. Yes.

4 Q. And you recognize what's depicted there?

5 A. Yes.

6 Q. And you see a bruise to her chin; is that
7 correct?

8 A. Yes.

9 Q. Do you also see the scar from the previous
10 chin injury in that photograph?

11 A. Yes.

12 Q. Okay. Let's switch gears a little bit.
13 Let's go back to the treatment she received for the
14 chin in April. What treatment did she receive?

15 A. They put a butterfly stitch on it. The
16 doctor didn't think it would need stitches.

17 THE COURT: I'm sorry. They put a
18 butterfly and --

19 THE WITNESS: -- stitch -- or a Band-aid,
20 I'm sorry. Not a stitch. The doctor didn't think
21 that she needed stitches. They put a
22 butterfly Band-aid -- they cleaned the wound and put a
23 butterfly Band-aid on it.

24 Q. (By Mr. Vitto) Now, let me show you
25 State's Exhibit 9. Victoria, this has been admitted

1 as State's Proposed Exhibit 9. It's Yessenia's doctor
2 visit to Kidfixers on December 29th of 2016. Do you
3 remember that visit?

4 A. Yes.

5 Q. Why did you take her to Kidfixers on
6 December 29th, 2016?

7 A. She had bumps all along the front of her
8 legs.

9 Q. And that caused you some concern?

10 A. Yeah. I didn't know what it was. And I
11 asked my sister and she actually thought they were,
12 like, bug bites of some sort. So I took her to the
13 doctor to make sure they weren't what they were.

14 Q. Okay. And do you recall the doctor being
15 concerned?

16 A. Yes.

17 Q. Victoria, prior to taking Yessenia to
18 Kidfixers, did anyone bring any event in particular to
19 your attention regarding Yessenia and the defendant?

20 A. Yes.

21 Q. And who was that?

22 A. Kishanna Marquez.

23 Q. And what did Kishanna bring to your
24 attention?

25 A. That Cole dragged her through the rocks

1 coming up to the stairs.

2 Q. And do you happen to recall, your best
3 recollection now, when Kishanna told you that?

4 A. The day of. not the day after it happened.

5 Q. So here's what we know. We know that
6 Yessenia saw the doctor on December 29th.

7 A. Yes.

8 Q. So did Kishanna tell you about what she saw
9 before or after December 29th?

10 A. Before.

11 Q. How long before?

12 A. I think it was about a week before. I
13 can't remember.

14 Q. That's your best recollection?

15 A. Yes.

16 Q. So roughly December 22?

17 A. Roughly.

18 Q. Just before Christmas. Do you happen to
19 remember what you were doing when Kishanna told you
20 what she observed?

21 A. No.

22 Q. Now, Victoria, do you recall speaking with
23 the defendant about disciplining your son Dwight?

24 A. Yes.

25 Q. Do you remember what he told you?

1 MR. MARTINEZ: Objection, Your Honor;
2 relevance.

3 MR. VITTO: Well, this whole hearing is
4 about relevance, but we're here to admit bad acts, at
5 least the State is. The Defense is here to --

6 THE COURT: Withhold your objection until I
7 get more information. I want to hear where he's going
8 with it.

9 Q. (By Mr. Vitto) Do you remember what the
10 defendant told you about disciplining your son Dwight?

11 A. Yes.

12 Q. And what did he tell you?

13 A. That he was afraid if he started, he
14 wouldn't stop.

15 Q. Okay. Now, what was the point of reference
16 for his saying that? What were you guys doing when he
17 told you that?

18 A. I don't understand the question.

19 Q. Were you guys just having a some couch
20 time, were you just chatting, watching a movie?

21 A. We were talking about him actually stepping
22 up and disciplining Dwight because I was having issues
23 with his mouth and his attitude and everything.

24 Q. And he volunteered that he was afraid to
25 discipline Dwight because if he did, he was afraid he

1 wouldn't stop; is that correct?

2 A. Yes.

3 Q. And what was your response to him?

4 A. I told him if he didn't get right with my
5 son and have a relationship with him, I would leave
6 him.

7 Q. Okay. And how old was Dwight at the time?

8 A. Nine.

9 Q. When he said that, did that scare you?

10 A. Yes.

11 Q. Now --

12 MR. MARTINEZ: And, Judge, I just want to
13 make another record here. I still have the same
14 standing objection as to this entire line of
15 questioning. It's irrelevant; it doesn't have
16 anything to do with the decedent in this case.

17 THE COURT: If we were in front of a jury,
18 I would be much more careful and sensitive. Since
19 it's just me, I can disregard irrelevant parts and so
20 forth.

21 Mr. Vitto, the objection is what's this
22 have to do with why we're here today. It's a
23 Petrocelli hearing.

24 MR. VITTO: My next question.

25 THE COURT: All right. And see where it

1 goes.

2 Q. (By Mr. Vitto) Victoria, with that in
3 mind, do you recall a time when he knew that he had
4 spanked Yessenia too hard?

5 A. Yes.

6 Q. What did he say?

7 A. He told me that he had spanked her -- he
8 told me he spanked her too hard, that he had popped
9 her a good one.

10 Q. Did he extrapolate at all? Did he say, "I
11 shouldn't do that again," or "She deserved it" or
12 anything else?

13 A. That he shouldn't --

14 THE COURT: I can't hear you.

15 THE WITNESS: That he had felt bad, and he
16 shouldn't do it again.

17 Q. (By Mr. Vitto) Okay. Now, the time that
18 he recognized that he had hit her too hard, was he
19 alone with Yessenia?

20 A. I don't remember.

21 Q. Okay. Was he babysitting?

22 A. Yes.

23 Q. He was babysitting. But you don't know
24 whether he was alone with her?

25 A. I can't remember if the kids were with him

1 or not, the boys.

2 Q. But he was babysitting?

3 A. Yes.

4 Q. And I only have a few more questions.

5 Victoria, did Yessenia cry to go with you
6 the day she died?

7 A. Yes.

8 Q. Were three years removed from that day,
9 with all that's gone on between then and now, in your
10 mind, did you have a better understanding of why she
11 cried to go with you that day?

12 MR. MARTINEZ: Objection, Your Honor.

13 MR. VITTO: What's the objection?

14 MR. MARTINEZ: Speculation.

15 MR. VITTO: I asked her her opinion.

16 MR. MARTINEZ: Inadmissible character
17 evidence.

18 MR. VITTO: It's absolute --

19 THE COURT: Let's not ask for opinion yet
20 or speculation. Let's just ask her. Do you know why
21 she wanted to go with you that day?

22 THE WITNESS: I don't know her reasoning,
23 no.

24 MR. VITTO: That's fine.

25 Q. (By Mr. Vitto) Do you know whether or not

1 she was afraid to be left alone with the defendant?

2 A. At the time, no.

3 Q. In other words, she didn't run after you
4 crying, "Don't leave me with Coley"?

5 A. She did.

6 Q. She did say that?

7 A. Yes.

8 Q. Do you remember exactly what she said?

9 A. "Mommy, please take me with you. I don't
10 want to be left here with Cole."

11 Q. Now, Victoria, previously, you had
12 testified that after speaking with the defendant after
13 Yessenia passed away, that you had asked him if
14 Yessenia was fighting with him. And he said, "Yeah.
15 We were going at it like we usually do," or something
16 to that effect. Can you picture that conversation in
17 your mind as we speak here today?

18 A. Yes.

19 Q. What was his demeanor like as he was saying
20 that to you?

21 A. He was scared.

22 Q. Did he look you in the eye when he said it?

23 A. No.

24 MR. MARTINEZ: Judge, I'm going to object
25 as to the relevance of the bad act here. We're

1 talking about this witness speaking with the defendant
2 after this occurred, the reason why we're here in the
3 first place. Well, sorry. I trailed off there,
4 Judge.

5 I'm objecting to the relevance for the
6 purpose of today's hearing. The State's asking the
7 witness about a conversation she had with the
8 defendant after he was already arrested on this case.
9 Not anything to do with the bad acts that we're here
10 for. So my objection is the relevance to today,
11 Judge.

12 MR. VITTO: Here's how they tie together.
13 It's my whole argument. The basis for admitting -- or
14 seeking to admit these bad acts is -- because they
15 have to come in for a specifically enumerated purpose
16 or other purposes; and as I briefed exhaustively and
17 argued exhaustively, the defendant has said that this
18 must be some kind of accident or misstate he doesn't
19 remember.

20 But my point is that; although, saying he
21 doesn't remember, he seems to remember a remarkable
22 amount of events and detail, not the least of which is
23 the fact that when asked whether Yessenia was fighting
24 him, he said to Yessenia's mother, "Yeah, we were
25 going at it." That's my point.

1 MR. MARTINEZ: Judge, I know we're going to
2 introduce transcripts. We're going to hear from
3 Captain Boruchowitz tomorrow. There is a whole lot of
4 I don't remember from Mr. Engelson in those
5 interviews. There's not a whole lot of -- there's not
6 any of "this is an accident." There may be some "I
7 didn't mean for this to happen." But there is no
8 "This was an accident. This was a mistake."

9 So the State seems to be pointing in the
10 direction of the other purpose for these bad acts
11 being absence of mistake or accident. We haven't
12 presented that at all as a defense in this case,
13 Your Honor, so it shouldn't come in because of that.
14 We haven't gotten that far. And there's a whole lot
15 of circular logic going on here that I see, Judge.

16 We're using -- the State's attempting to
17 use the case at hand here and the facts we have to
18 show that Mr. Engelson committed these prior bad acts,
19 which they're then going to take and show that he
20 committed the case we're here for. So there's just a
21 whole bunch of circular logic that is -- it's
22 inappropriate, and I'm going to expound on that more
23 tomorrow when we do our closing argument, Judge. But
24 that's my objection to this question.

25 MR. VITTO: If there was an objection

1 articulated there, wow. I don't know what it is. I
2 don't know what the objection is to this evidence.

3 MR. MARTINEZ: The objection was and still
4 is relevance, Judge.

5 MR. VITTO: Relevance is something that
6 this Court is going to determine at the close of this
7 hearing. There's no jury sitting over here.

8 MR. MARTINEZ: Questions asked still need
9 to be relevant to these proceedings today, Judge.

10 MR. VITTO: We've briefed these proceedings
11 to the Court. I've set exhaustively out my premise
12 for the evidence that I'm seeking to have admitted and
13 why, and the Defense has opposed that. And they said,
14 "He doesn't remember anything." Well, that's not
15 true. As counsel pointed out, you're going to have
16 the testimony of Captain Boruchowitz, and you're going
17 to see the testimony from Alexander Fernandez. He
18 remembers a whole lot.

19 MR. MARTINEZ: Then the State's argument
20 sounds to be about Mr. Engelson's credibility here,
21 Judge, not about whether this was a mistake of fact or
22 an accident or the bad acts that we're here for today
23 or any other purpose that they can bring the bad acts
24 in on.

25 THE COURT: Kirk has been asking questions

1 piecemeal, and you've been objecting to them for
2 different reasons as he's asked them piecemeal. And
3 I've said, "Let's see where he's going with it. Let's
4 let him ask these questions." I might have taken a
5 different tact if this was in front of a jury, but I'm
6 looking at the totality of it.

7 Kirk says the reason I'm asking these
8 piecemeal questions from her and from other witnesses
9 is because at the end, I'm going to argue mistake of
10 fact, and so forth. And I am going to be able to look
11 at these individually and not accept a circular
12 argument if I feel it's not there.

13 MR. MARTINEZ: Understood.

14 THE COURT: So as he's been setting forth
15 the different witnesses, in my head I've been looking
16 at is this relevant, is this more probative than
17 prejudicial, is he showing me with clear and
18 convincing evidence. And I'm categorizing all of the
19 witnesses and the evidence in my head as he's doing
20 it.

21 At the same time, he's going to argue to me
22 at closing why I should allow it. That there's not a
23 mistake of fact, and so forth. And you're going to
24 argue and say he's just showing you this to say that
25 Cole acted in -- what's the word? -- in conformity;

1 because he did it before, he's doing it again. And
2 I'm going to have to make that decision based on all
3 of the evidence. Anything that he's getting out right
4 now from this witness or others that won't be relevant
5 to that analysis in my hand, I will disregard. I
6 won't be prejudiced or biased by it like a jury might
7 be.

8 So right now you're making an objection
9 that he's asking her a question that occurred a
10 year -- "What did Cole say to you a year after this
11 incident," and whatever. And I don't think that
12 relevant to the analysis of whether it should be
13 admitted pursuant to the Petrocelli hearing. I will
14 disregard this.

15 But I don't want to disregard it right now
16 and say you can't ask it, because I want to hear the
17 closing argument and how this ties together, and so
18 forth.

19 MR. MARTINEZ: Understood, Your Honor. It
20 sounds like you're asking me to have a lot more faith
21 in you than I think I do right now, and I understand.

22 THE COURT: Yes, sir.

23 MR. MARTINEZ: I will, Judge. Thank you.

24 THE COURT: I've done one of these before.
25 I'm just kidding. I've done a lot of these before.

1 MR. VITTO: Thanks, Judge.

2 THE COURT: Anything else, Kirk?

3 MR. VITTO: Just real quick.

4 Q. (By Mr. Vitto) Victoria, this
5 conversation -- I just want to make sure that we are
6 on the same page -- this conversation that you had
7 with the defendant, how quickly after Yessenia's death
8 was that conversation with him where you asked him if
9 she was fighting him?

10 A. Days.

11 Q. Within days?

12 A. Yes.

13 Q. How many conversations did you have with
14 the defendant in the presence of law enforcement?

15 A. One.

16 Q. And it was at that -- it was that
17 conversation with law enforcement present that you
18 asked him, "Was she fighting you," and he said, "Yeah,
19 we were going at it"?

20 A. Yes.

21 MR. VITTO: Your Honor, I would request
22 that for purposes of this hearing 1 through 7 be
23 admitted. They are specifically tied together by the
24 Extraction Report which has already been admitted for
25 the purposes of this hearing. I would request that 8

1 be admitted. That's the Quick Care documents. The
2 condo photos, which I think are 14 and 15.

3 MS. BOSKOVICH: 15 and 16.

4 MR. VITTO: 15 and 16, I would ask that
5 those be admitted. Kidfixers is already admitted.
6 The photograph postmortem is I think State's Proposed
7 Exhibit 10. I'm going to wait until Josh Teter gets
8 here tomorrow. He's the one that took that photo. So
9 I'm asking for the condo photos, the UMC Quick Care,
10 and 1 through 7 that are corroborated by already
11 admitted 17.

12 THE COURT: One through 7, 8, and 15 and
13 16. Any objections?

14 MR. MARTINEZ: Not to those for purposes of
15 this hearing, Judge.

16 THE COURT: Thank you. They're admitted
17 for purposes of this hearing.

18 (Whereupon State's Exhibit Nos. 1 through
19 7, 8, and 15 and 16 are admitted into
20 evidence.)

21 MR. MARTINEZ: Okay.

22 MR. VITTO: And I have no more questions of
23 this witness at this time.

24 THE COURT: All right. Counsel?

25 MR. MARTINEZ: Thank you.

CROSS-EXAMINATION

BY MR. MARTINEZ:

Q. Victoria, you mentioned a couple of times on direct that Cole said "he and Yessenia were going at it like they usually do" or "normally do," something along those lines; right?

A. Yes.

Q. What does that mean?

A. She doesn't like her head put underneath the shower.

Q. Okay.

A. He was giving her a shower.

Q. Okay. So when they're going at it, does that mean that she's fighting and trying to get out of the water and he's kind of pushing her back in the water?

A. Yes.

Q. That's your understanding of it?

A. Yes.

Q. And have you seen that happen before?

A. She -- yes.

Q. Now, Victoria, how long have you known Cole for?

A. A long time, since I was 18.

Q. How old are you now?

1 A. Thirty-five.

2 Q. I know it's a terrible question. I'm not
3 supposed to --

4 A. It's okay.

5 THE COURT: Fifteen to 35 is what you said?

6 THE WITNESS: Eighteen. I'm sorry, 18.

7 THE COURT: Seventeen years?

8 THE WITNESS: Yeah.

9 Q. (By Mr. Martinez) And now, you rekindled
10 your relationship, I think is the word the State used,
11 in about September of 2016?

12 A. Yes.

13 Q. So had you two dated prior?

14 A. Yes. Well, if you want to call it that.

15 Q. You had some sort of relationship prior to
16 September of 2016?

17 A. Yes.

18 Q. And at that time you were living in the --
19 were you living in the condominium yet with Kishanna?

20 A. In September?

21 Q. Of 2016, yes.

22 A. Yes.

23 Q. And you lived with Kishanna and your three
24 kids?

25 A. Yes.

1 Q. And that was with Yessenia, Dwight, and
2 Nicole; right?

3 A. Yes.

4 Q. Now, did all three of the kids have the
5 same father?

6 A. No.

7 Q. Okay. Yessenia and Dwight had the same
8 father?

9 A. Yes.

10 Q. Did they have visitation with their father?

11 A. Yes.

12 Q. And that was Yancey Camp; correct?

13 A. Yes.

14 Q. And Yancey has passed away since then as
15 well; correct?

16 A. Yes.

17 Q. What was their visitation schedule with
18 their father?

19 A. It wasn't through the court, if that's what
20 you're asking. It was every weekend.

21 Q. Okay. So every weekend?

22 A. Every --

23 Q. Every other weekend?

24 A. Every -- it was supposed to be every
25 weekend, and then every other weekend, and then

1 whenever Yancey found the time to pick them up.

2 Q. So let's talk about that time frame from
3 September 2016 to December of 2016, what was the
4 visitation schedule like? Was it more regular every
5 weekend? Was it irregular?

6 A. It was every other weekend.

7 Q. Would you take the kids to Yancey's house?

8 A. Yes. I would pick them up as well.

9 Q. When you took the kids to Yancey's house
10 and dropped them off, would the kids ever tell you
11 they don't want to go?

12 A. Sometimes.

13 Q. Would Yessenia cry and not want to go?

14 A. No.

15 Q. Never? When you left and left Yessenia
16 with anyone else, would she ever cry and want to go
17 with you?

18 A. Not usually, no. She was a really people
19 person. She loved people.

20 Q. But you said not usually; so it did happen
21 sometimes?

22 A. Yes, yes.

23 Q. Did it happen with people other than Cole?

24 A. Where she wanted to go with me and not be
25 left?

1 Q. Yes.

2 A. Yes.

3 Q. Now, how long were you and Cole dating
4 before Cole started babysitting your kids?

5 A. I don't remember when Kisha got a job and
6 she said -- because she wouldn't be able to babysit
7 for me anymore.

8 Q. Okay. So Cole started babysitting for you
9 and started helping you out because Kishanna couldn't?

10 A. Yes. Because I couldn't -- and I couldn't
11 afford a babysitter.

12 Q. Now, one of the things that we're trying to
13 nail down here is timing of when some of these
14 incidents happened. So forgive me if some of these
15 questions seem out in left field; promise they're just
16 all about timing.

17 A. Uh-huh.

18 Q. Your kids go to school; right?

19 A. Yes.

20 Q. And at the time they were in the Clark
21 County School District?

22 A. Yes.

23 Q. What was the Christmas vacation schedule
24 like for them then?

25 A. To be honest with you, I don't remember. I

1 know they -- I had them Christmas day.

2 Q. And for school --

3 A. Oh, for school --

4 Q. For school purposes --

5 A. -- they were out for --

6 Q. -- when were they out of school? Is it
7 usually the week before Christmas?

8 A. They were out for two weeks -- or three
9 weeks. It's usually like right -- the week before
10 like the week of Christmas, all the way up until after
11 the New Year, I'm pretty sure.

12 Q. All right. And now, you testified that
13 Kishanna told you about the incident with Cole
14 dragging her through the rocks; right?

15 A. Yes.

16 Q. You didn't call the police when that
17 happened; right?

18 A. No.

19 Q. You didn't break up with Cole; right?

20 A. No.

21 Q. You didn't have him stop babysitting at
22 all; right?

23 A. No.

24 Q. Did you go -- I guess I will use the word
25 inspect -- did you go and inspect Yessenia? Did you

1 go look for any bruises, any marks, anything like
2 that?

3 A. Yes.

4 Q. Did you see any scrapes on her?

5 A. There was like redness, but nothing like
6 out of the ordinary.

7 Q. Okay. Now, let's talk about the Kidfixers
8 visit. You said you took her to Kidfixers because you
9 noticed the bumps or marks on her legs; right?

10 A. The bumps; right.

11 Q. Did you take her to Kidfixers the day that
12 you noticed the bumps?

13 A. Yes.

14 Q. The first day that you did?

15 A. Yeah. It was when I got the kids back from
16 her father's house.

17 Q. Okay. So you didn't notice the bumps
18 before the kids went to their father's house?

19 A. No.

20 Q. You noticed it when they got back from her
21 father's house; right?

22 A. Yes.

23 Q. And that's Yancey's house; right?

24 A. Yes.

25 Q. And then as soon as you noticed the bumps,

1 you took her to Kidfixers?

2 A. Yes.

3 Q. Any idea if Cole went to visit them while
4 they were at Yancey's house?

5 A. I don't understand that question.

6 Q. Do you know if while the kids were at
7 Yancey's house for that visit, did Cole go see the
8 kids while they were at Yancey's house?

9 A. No.

10 Q. Did you have to do any follow-up for the
11 bumps on her legs after that visit?

12 A. No.

13 Q. Did the bumps go away?

14 A. Eventually.

15 Q. Did you have to put any ointment or
16 anything like that on them?

17 A. No. They turned into bruises and then
18 finally went away.

19 Q. Did they seem to cause her any pain or
20 discomfort?

21 A. Yes.

22 Q. Explain that to me.

23 A. That's why I took her too because she said
24 it hurts.

25 Q. Okay. Was she scratching at them?

1 A. No.

2 Q. While we're on that, so about this time in
3 December, Yessenia could talk?

4 A. Yes.

5 Q. She could speak in complete sentences?

6 A. More or less.

7 Q. And did it progressively get better as the
8 months went on from there?

9 A. Yes.

10 Q. The incident with Cole where he drug her
11 through the rocks, did you ever ask Yessenia about
12 that?

13 A. No.

14 Q. Did Kishanna ever bring up that incident
15 again to you later?

16 A. How much later?

17 Q. At all. Did you have any other
18 conversations about it?

19 A. After Yessenia had passed, yes.

20 Q. And how did that come about? Did Kishanna
21 call you and said, "Hey, remember when"?

22 A. Well, no. But she pretty much brought it
23 up, because I left Kishanna. So it was more of "I
24 told you so."

25 Q. And you guys have talked since then; right?

1 A. Yes.

2 Q. Now, when you and Cole were dating, you
3 were separated; so you were at work or Cole was at
4 work, or Cole didn't live with you the entire time;
5 right?

6 A. No.

7 Q. So when you were apart from each other, did
8 you talk to the phone?

9 A. Yeah.

10 Q. Did you text message?

11 A. Texted.

12 Q. Did you do that pretty often?

13 A. I would say so, a normal relationship like
14 text back and forth.

15 Q. Sure. So probably hundreds if not
16 thousands of text messages I'm sure.

17 A. Probably.

18 Q. Most of it about not a whole lot, just
19 generally small talk, I guess I would say; right?

20 A. Yeah.

21 Q. Now, when he was babysitting the kids for
22 you, you guys would still text back and forth?

23 A. Yeah.

24 Q. Would he give you updates on the kids?

25 A. I mean not -- unless like Yessenia was

1 throwing a fit or, you know.

2 Q. So if Yessenia was throwing a fit, he would
3 let you know?

4 A. Most of the time.

5 Q. Would he send you pictures of her?

6 A. Yes.

7 Q. I know that we have the one in here where
8 you said specifically that picture is of her throwing
9 a fit?

10 A. Yes. That was the most recent one?

11 Q. Did he send previous pictures of her
12 throwing a fit?

13 A. From -- yes, from when we lived in
14 Las Vegas.

15 Q. Okay. So not the first time that that has
16 happened?

17 A. No.

18 Q. So when he sent you that picture of her
19 throwing a fit, that's not something that alarmed you?

20 A. No.

21 Q. How was Yessenia as a child? Was she
22 always happy?

23 A. Yes.

24 Q. But did she throw tantrums?

25 A. What three year old doesn't?

- 1 Q. Right. Terrible two's; right?
- 2 A. Yes.
- 3 Q. I think most people say threes are worse.
- 4 A. They are.
- 5 Q. So she would throw tantrums?
- 6 A. Yes.
- 7 Q. She would misbehave?
- 8 A. Yes.
- 9 Q. Did she have a lot of energy?
- 10 A. Oh, yes.
- 11 Q. Run around and want to play all of the
- 12 time?
- 13 A. Yes.
- 14 Q. Did she bump into things?
- 15 A. No. She was pretty coordinated.
- 16 Q. Okay. Did she like to climb?
- 17 A. Not like -- I mean she would, like, get on
- 18 our furniture, but she wouldn't like climb on, you
- 19 know.
- 20 Q. Not like rock climbing?
- 21 A. Yeah -- No. I mean, yeah, she would climb
- 22 around the furniture.
- 23 Q. Would she fall down from time to time?
- 24 A. Yeah.
- 25 Q. How often was Cole babysitting Yessenia?

1 And I guess we'll take this in two parts. Prior to
2 you two moving to Pahrump, how often would he babysit
3 her.

4 A. Whenever -- because I did have a babysitter
5 I paid after Kishanna, and he would help me with days
6 if I couldn't afford -- because it was a hundred
7 dollars a week. So if I couldn't afford the actual
8 100, he would pick up days for me.

9 Q. And then how about after you guys moved to
10 Pahrump, how often would he watch her?

11 A. The days he was home.

12 Q. When you say the days that he was home, was
13 he splitting some time in Las Vegas?

14 A. Yes.

15 Q. Okay. How often was he spending a night in
16 Las Vegas?

17 A. Three days in Vegas, four days here.

18 Q. And what was Yessenia and Cole's
19 relationship like?

20 A. Great. I mean I don't know how you want me
21 to answer that.

22 Q. Well, I will ask the question. I will ask
23 a more directed question. You've said previously that
24 Yessenia was his favorite; right?

25 A. Yes.

1 Q. And that's of your kids?
2 A. Yes.
3 Q. You called her Cole's little minion?
4 A. I did.
5 Q. Why is that?
6 A. Because she would always follow him around.
7 Q. She pick up some of his mannerisms?
8 A. Yes.
9 Q. Now, the incident where Yessenia cut her
10 chin open, you said you were at work; right?
11 A. Yes.
12 Q. Were Nicole or Dwight home?
13 A. School.
14 Q. So it happened in the middle of the day?
15 A. Yes.
16 Q. When you got the text message, you left
17 work and came home?
18 A. Immediately.
19 Q. And you took her to Quick Care?
20 A. Yes.
21 Q. Did Cole go with you to Quick Care?
22 A. I don't remember.
23 Q. And so this is about five months after the
24 December incident that Kishanna told you about?
25 A. Yes.

1 Q. So I assume her speech would have gotten
2 better from then; right?

3 A. Yes.

4 Q. Did you ask her what happened?

5 A. She said she fell down.

6 Q. Okay. Did she tell you from where she fell
7 down?

8 A. No. She was pretty upset. Her chin was
9 busted.

10 Q. That was my next question. Was she crying
11 and kind of inconsolable?

12 A. Yeah, uh-huh.

13 Q. But she did say that she fell down?

14 A. Yes.

15 Q. She didn't say Cole pushed her?

16 A. No.

17 Q. When Cole would send you pictures of
18 Yessenia when she was throwing a fit, was it -- I
19 assume he didn't just send a picture without a
20 message; right?

21 A. Yes. He would send a message, tell me she
22 was throwing a fit.

23 Q. Okay. She's throwing a fit. She's not
24 behaving herself.

25 A. Yes.

1 Q. Almost like he's tattling on her to you?

2 A. Yes.

3 Q. And you said she didn't get any stitches on
4 her chin; right?

5 A. No. I wish I would have.

6 Q. She just got the --

7 A. -- butterfly --

8 Q. Butterfly Band-aid.

9 A. Butterfly Band-aid, yes.

10 Q. And with that incident, you didn't call the
11 police; right?

12 A. No.

13 Q. You didn't call CPS; right?

14 A. No.

15 Q. You didn't break up with Cole?

16 A. No.

17 Q. Now, the UMC records that you have, when
18 did you get those records?

19 A. The day I took her to UMC.

20 Q. Okay. So they handed them to you when you
21 left?

22 A. Yes, yeah. They hand you -- that was
23 basically out take and the paper that we fill out and
24 everything.

25 Q. I understand. And do you have a safe place

1 at home where you keep them?

2 A. Yes.

3 Q. Is that in a safe or a folder or something
4 along those lines?

5 A. I have a filing cabinet where I keep all of
6 my personal papers and everything.

7 MR. MARTINEZ: Court's indulgence,
8 Your Honor.

9 Pass the witness, Your Honor.

10 THE COURT: Thank you, sir.

11 MR. VITTO: Nothing further, Judge.

12 THE COURT: Thank you for testifying. You
13 may step down.

14 MR. VITTO: Judge, that's all I have for
15 today.

16 THE COURT: Reserve argument for tomorrow
17 post other witnesses?

18 MR. MARTINEZ: Yes.

19 THE COURT: All right. Anything else we
20 need to do today?

21 MR. VITTO: I don't think so.

22 THE COURT: All right. We'll see you
23 tomorrow at 1:15 then.

24 MR. MARTINEZ: Thank you.

25 THE BAILIFF: All rise.

1 (The proceedings concluded at
2 3:45 p.m.)
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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF NYE)

5 I, Cecilia D. Thomas, official reporter of
6 the Fifth Judicial District Court of the State of
7 Nevada, in and for the County of Nye, do hereby
8 certify:

9 That I reported the taking of the
10 proceedings at the time and place aforesaid;

11 That I thereafter transcribed my said
12 shorthand notes into typewriting, and that the
13 typewritten transcript of said proceedings is a
14 complete, true, and accurate record of statements
15 provided by the parties at said time, to the best of
16 my ability.

17 I further certify that I am not a relative,
18 employee, or independent contractor of counsel of any
19 of the parties involved in said action; nor a person
20 financially interested in the action; nor do I have
21 any other relationship with any of the parties or with
22 counsel of any of the parties involved in the action
23 that may reasonably cause my impartiality to be
24 questioned.

25 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Nye, State of Nevada, this 20th
day of August 2020.

Cecilia D. Thomas

Cecilia D. Thomas,
RPR, CCR No. 712