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SUPREME COURT OF THE STATE OF NEVADA MAY 23 2022

ELIZABETH A. BROWN
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KEVIN JOHN MENTABERRY

DOCKET NO. 83878

Appellant,

vs.

STATE OF NEVADA,

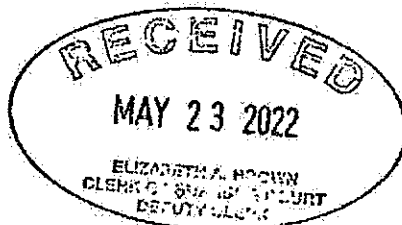
Respondent.

APPELLANT'S APPENDIX
VOLUME II

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1 Case No. CR-FP-18-5030

2 Dept. II

6:14 JAN 31 PM 3:57
ELKO CO DISTRICT COURT

CLERK _____ DEPUTY AS

6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL

12 KEVIN JOHN MENTABERRY, : VOLUME 4

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17

18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on January 24, 2020, at the hour of
20 8:22 a.m. of said day, in Elko, Nevada, before the
21 HONORABLE ALVIN R. KACIN, District Judge.

22

23

24

25 Stenographically Reported by Lisa M. Manley, CCR No. 271

COPY

A P P E A R A N C E S

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I N D E X

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PROCEEDINGS

1
2 THE COURT: We're on the record again for Case
3 CR-FP-18-5030, State versus Mentaberry.
4 Mr. Mentaberry is back in court with his counsel
5 Gary Woodbury. Elko County Deputy District Attorney Chad
6 Thompson is present to represent the State.
7 Will counsel stipulate again to the full presence
8 of the jury and the alternate?
9 MR. WOODBURY: So stipulated.
10 MR. THOMPSON: Yes.
11 THE COURT: Very good. Next witness for the
12 State.
13 MR. THOMPSON: Officer Kyle Craig.
14 THE COURT: All right, sir. Please raise your
15 right hand and be sworn.
16 (WHEREUPON, the witness was sworn)
17 THE COURT: This is the witness stand here. Door
18 comes out to you. Watch your step, please.
19 Mr. Thompson.
20 KYLE CRAIG
21 called as a witness in said case, having been first
22 duly sworn, testified as follows:
23 DIRECT EXAMINATION
24 BY MR. THOMPSON:
25 Q. Would you state your name and spell both your

1 Q. Was that A.P.
2 A. Yes, sir.
3 Q. Okay. And you met also with her counselor?
4 A. Yes.
5 Q. Who was that?
6 A. I don't recall her name. I did meet with her,
7 though.
8 Q. You what?
9 A. I did meet with her, though.
10 Q. Does the name Leslie Rangel ring a bell?
11 A. Yes.
12 Q. And could you describe -- I guess you -- you
13 took a statement from them in some fashion?
14 A. Yes, sir.
15 Q. And when you met with them, did you take like
16 a verbal statement first and then do a written statement
17 afterwards or --
18 A. Yes.
19 Q. -- how did that go?
20 A. Yes, I -- I did do a verbal statement first.
21 And then after speaking with the parties, I gave them
22 statements to fill out individually. Obviously not in the
23 same room, so they couldn't talk together, but they -- I
24 did do a verbal statement and then a written statement.
25 Q. Okay. And when you did the verbal statements,

1 first and last name, please?
2 A. Kyle Craig. K-y-l-e, C-r-a-i-g.
3 Q. What is your occupation?
4 A. Police officer for the City of Elko.
5 Q. How long have you been employed with them?
6 A. Almost four years.
7 Q. I want to direct your attention back to
8 January 12 of 2018. Were you working on that particular
9 day?
10 A. Yes, sir.
11 Q. And did you respond to a call around the 1626
12 hour on that day?
13 A. Yes, sir.
14 Q. Where did you respond to?
15 A. I responded to the Terraces on 1250 Lamoille
16 Highway in regard to a report of a sexual assault of a
17 juvenile.
18 Q. Okay. Who did you meet with when you got
19 there?
20 A. A.P. and her counselor, whose name I don't
21 recall.
22 Q. We're going ahead and using her name in court,
23 but the transcript will show otherwise. I recognize in
24 your reports you just referred to her as A.P.
25 A. Yes, sir.

1 were they together?
2 A. No. Oh, excuse me, the verbal statements,
3 yes.
4 Q. But then you separated them for the written
5 statement?
6 A. Yes.
7 Q. Any particular reason you didn't separate them
8 for the verbal statements as well?
9 A. No reason.
10 Q. Okay. Could you describe A.P.'s demeanor as
11 you spoke with her?
12 A. Her body language was very closed-off. I do
13 remember when I was sitting with her, she was almost kind
14 of sitting like I am now. Her head was down. She was
15 crying.
16 Q. And she was crying?
17 A. Yes, sir.
18 Q. Okay. And you got a written statements from
19 both of them?
20 A. Yes, sir.
21 Q. Showing you Exhibits 2 and 3. Are those the
22 two statements that you got from these two individuals?
23 A. Yes, sir.
24 Q. I guess I should clarify. Highlighting on
25 this one, was that highlighting there?

1 A. I don't recall.
2 Q. Okay. Then after speaking with A.P. and
3 Ms. Rangel on the 12th, did you do further investigation?
4 A. Yes, sir.
5 Q. And what was that?
6 A. I spoke with one of her friends named A.H.
7 over the phone at the Elko Police Department.
8 Q. Okay. And what time -- or what day was that?
9 A. I don't recall the exact date. It was, I
10 would say, a couple days after the fact --
11 Q. Okay.
12 A. -- after the initial report.
13 Q. And so if your report read January 14 of 2018
14 that you spoke with --
15 A. Yes, sir.
16 Q. Do you want to look at your report?
17 A. If I could.
18 Q. Okay. This is Exhibit 4. Looking at the
19 second page there. Is this your report with A.H.
20 A. Yes, sir.
21 Q. Okay. And what is the date?
22 A. It is the 14th of January, 2018.
23 Q. So then two days after you -- you met with
24 A.P.
25 A. Yes, sir.

1 A. Yes. She said she saw A.P. and Mr. Mentaberry
2 and that she looked uncomfortable.
3 Q. Okay. Now, did she describe the positioning
4 of Mr. Mentaberry and A.P. and how close they were?
5 A. I don't recall, sir.
6 Q. Would it help to refresh your memory to look
7 at your report?
8 A. It would.
9 Q. Did that help to refresh your memory?
10 A. Yes, sir.
11 Q. Did she describe how close they were?
12 A. Really close.
13 Q. Okay. And then in describing that A.P. was
14 uncomfortable, did she -- did she say "very uncomfortable"?
15 A. Again, sorry, I do not recall.
16 Q. Okay. Would it help to refresh your memory to
17 look at your report?
18 THE COURT: Is this marked as an exhibit?
19 MR. THOMPSON: It is. I believe it is Exhibit 4.
20 THE COURT: Exhibit 4 for identification. He may
21 do so. Please proceed.
22 Q. Did that help to refresh your memory?
23 A. Yes, sir.
24 Q. How did she describe the level of comfort of
25 A.P.

1 Q. And this was over the phone?
2 A. Yes, sir.
3 Q. Now, in your interview with her, did she
4 describe the seating arrangement of the folks on the couch?
5 A. Yes, sir, he -- rather, she described it as an
6 L-shape of the couch itself, and A.P. was sitting on one
7 side of the couch. Next to her was Mr. Mentaberry, and
8 then she -- she slept there.
9 Q. "She" being A.H?
10 A. "She" being -- yes, "she" being A.H.
11 Q. Okay. When she was describing the seating
12 arrangements, did she ever mention a dog?
13 A. I'd have to refer back to my report, sir. My
14 apologies.
15 Q. Read that to yourself to refresh your memory.
16 Go ahead and flip that over.
17 Did that help to refresh your memory?
18 A. Yes, sir.
19 Q. Did she ever mention a dog?
20 A. No.
21 Q. And then did she describe how long she was
22 asleep for?
23 A. Approximately an hour, sir.
24 Q. And when she woke up, did she -- did she then
25 describe what she saw when she woke up?

1 A. Very uncomfortable.
2 Q. Okay. And then she at some point ushered
3 Mr. Mentaberry upstairs?
4 A. Yes, sir.
5 Q. And when she came back, did she inquire about
6 A.P. and how she was?
7 A. Yes, sir.
8 Q. And did she describe what -- I'm sorry, I keep
9 calling her A.P. now -- A.P., did she describe what A.P.'s
10 reply was to you?
11 A. Yes, A.P. told A.H. that Mr. Mentaberry
12 touched her stomach.
13 Q. Okay. Did she only use those words?
14 A. Yes.
15 Q. Did she describe A.P.'s demeanor at that time?
16 A. I would have to refer back to the report, sir.
17 Q. Well, I guess her emotional state?
18 A. She was visibly upset.
19 Q. Okay. Did she describe it in any particular
20 way as far as what she saw?
21 A. I don't recall.
22 Q. Okay. Would it help to refresh your memory to
23 look at your report again?
24 A. Yes.
25 Q. I think it's that middle paragraph there.

1 A. Okay.
 2 Q. Did that help to refresh your memory?
 3 A. Yes, sir.
 4 Q. And how did she describe A.P.
 5 A. She was crying.
 6 Q. Crying?
 7 A. Yes, sir.
 8 Q. Okay. And that was her word?
 9 A. That was her words.
 10 Q. Did she qualify that in any way?
 11 A. Meaning?
 12 Q. Like crying a little bit or just one tear or
 13 anything like that?
 14 A. Just crying.
 15 Q. Just crying?
 16 A. Yes, sir.
 17 Q. And then you asked her at some point, I take
 18 it, based on your report, that -- after this, the girls
 19 then go into the room. She told you that?
 20 A. Yes, sir.
 21 Q. And then I -- I take it you asked her at some
 22 point whether anybody tried to get back into the room, or
 23 something to that effect?
 24 A. Yes, sir.
 25 Q. And what was her response to that?

12

1 you spoke with A.H., was it a free flow of information?

2 A. Yes, sir.

3 MR. THOMPSON: I don't have anything else for
 4 Officer Craig.

5 THE COURT: Cross-examination.

6 MR. WOODBURY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WOODBURY:

9 Q. Can I see Exhibit 4, please.

10 Were you alone when you went to Ms. Rangel's
 11 and A.P.? Were you alone?

12 A. No, sir.

13 Q. Did you have another officer with you?

14 A. Yes, sir.

15 Q. Who was that?

16 A. Officer Fred McKown, also Elko Police
 17 Department.

18 Q. And was he in the car with you, or was he in a
 19 separate car?

20 A. Separate car, sir.

21 Q. And where did the conversation take place,
 22 inside or outside?

23 A. Inside.

24 Q. In the office of Ms. Rangel?

25 A. Yes, sir.

14

1 A. I don't recall again.
 2 Q. Did you note that in your report, though?
 3 A. I would note that in my report, yes.
 4 Q. Would it help to refresh your memory?
 5 A. Yes.
 6 Q. Go ahead.
 7 Did that help to refresh your memory?
 8 A. Yes, sir.
 9 Q. And when you asked her that particular
 10 question, how did she respond?
 11 A. She said that she did not recall if anyone
 12 tried to get in, "she" being A.H.
 13 Q. Okay. Now, I don't know if you followed up
 14 with her and said, "Do you -- do you just not recall it
 15 happening or are you saying it didn't happen," or did you
 16 try to clarify that in any way?
 17 A. No, sir.
 18 Q. Okay. And then at any time during your
 19 interview with her, did she ever mention that A.P. had a
 20 cell phone or she saw A.P. with a cell phone?
 21 A. No.
 22 Q. She never used that to describe how A.P. was
 23 sitting?
 24 A. No, sir.
 25 Q. And as far as her demeanor on the phone, when

13

1 Q. And I take it that you were simply dispatched
 2 up there?

3 A. Yes, sir.

4 Q. And you have no particular expertise as a --
 5 other than normal police officer training about behavior in
 6 people?

7 A. Correct.

8 Q. Okay. And you're a street officer?

9 A. Yes, sir.

10 Q. And when you went in, were Ms. Rangel and Ms.
 11 A.P. seated or were they standing up or what, if you
 12 recall?

13 A. A.P. was seated and Ms. Rangel was standing.

14 Q. And what was Ms. Rangel's demeanor?

15 A. I don't recall her demeanor.

16 Q. And that means to say you couldn't tell
 17 whether she was upset or not upset?

18 A. I just don't remember what her demeanor was,
 19 sir.

20 Q. Okay. And how did the conversation begin?

21 A. Speaking with A.P., I -- I didn't just force
 22 my way into it. I kind of eased into the conversation and
 23 then proceeded to ask what happened on New Year's Eve of
 24 2017.

25 Q. All right. And where did you get the first

15

266

1 rundown of what happened on -- that this had anything to do
2 with December 31st?
3 A. It was in Ms. Rangel's office.
4 Q. I'm sorry?
5 A. It was in Ms. Rangel's office.
6 Q. And how did you get the information that it
7 had to do with December 31, 2017?
8 A. I asked both A.P. and Ms. Rangel.
9 Q. All right. They both responded?
10 A. When you say "both responded," do you mean
11 they responded at the same time or --
12 Q. Mostly I am just asking for your recitation of
13 the conversation to find out when --
14 A. I got -- I got information from both parties
15 on the date.
16 Q. And how long did the verbal conversation last?
17 A. I would say maybe a few minutes.
18 Q. Fifteen?
19 A. A few.
20 Q. Oh, where was Officer McKown at this time?
21 A. He was present with me.
22 Q. And did the conversation begin by you
23 informing either Ms. Rangel or Ms. A.P. that they didn't
24 need to talk to you?
25 A. No.

15

1 A. That would be correct, sir.
2 Q. And he petted the dog and started to graze her
3 side?
4 A. Yes, sir.
5 Q. Is "graze" your word or hers?
6 A. Probably going to be -- I'd say I don't
7 recall. Not going to guess.
8 Q. Then she said that Mr. Mentaberry moved the
9 dog and started rubbing her stomach?
10 A. Yes.
11 Q. And then she got scared and believed that
12 Mr. Mentaberry thought she was sleeping?
13 A. Yes.
14 Q. Then she stated that Mr. Mentaberry unbuttoned
15 her pants?
16 A. Yes.
17 Q. And that he put his hand down her pants inside
18 her underwear?
19 A. Yes.
20 Q. Did you ask what position she was in when this
21 unbuttoning took place?
22 A. I don't recall.
23 Q. So I assume that when you talked to A.H. on
24 January 14, two days later, you asked whether when she saw
25 A.P., A.P.'s pants were unbuttoned or if she ever saw her

18

1 Q. Did Ms. A.P. tell you -- in response to your
2 question if Mr. Mentaberry was intoxicated, do you recall
3 what she told you?
4 A. She said "yes."
5 Q. What did she say? Just "yes"?
6 A. I don't recall the full set -- the full
7 conversation, but the long story short of it would be
8 "yes."
9 Q. Did she tell you he drank two bottles of
10 vodka?
11 A. Yes.
12 Q. And actually she stated she knew that, right?
13 A. Yes.
14 Q. Did you ask her where she had seen that or the
15 circumstances under which she had seen it?
16 A. No.
17 Q. Is that -- was that conversation audio
18 recorded?
19 A. No, sir. And we did not have body cams at
20 that time.
21 Q. I'm sorry?
22 A. And we did not have body cam at that time.
23 Q. And she stated, A.P. -- A.P. told you that --
24 let's see -- she told you first that Mr. Mentaberry had the
25 dog between herself and him?

17

1 buttoning the pants back up?
2 A. I didn't ask that question, sir.
3 Q. How come?
4 A. Didn't come to mind at the time.
5 Q. I'm sorry?
6 A. It didn't come to mind at that time.
7 Q. What -- what -- your job, I assume, is to just
8 get a preliminary report sort of?
9 A. Yes, sir.
10 Q. And then in the police department procedures,
11 what would follow from you receiving this preliminary
12 report?
13 A. After the preliminary report, a detective
14 would be contacted to take over the case.
15 Q. All right. And would you do the contacting or
16 some other process to get the detective involved?
17 A. It would be either me or my supervisor.
18 Q. Okay. And do you recall how that worked in
19 this case?
20 A. I don't recall.
21 Q. And you stated here that Kevin woke her up
22 after he had penetrated her vagina with his finger -- his
23 finger?
24 A. Yes, sir.
25 Q. And you have "woke her up" in quotation marks?

19

1 A. Yes, sir.
 2 Q. How come is that?
 3 A. Exact words.
 4 Q. And so apparently what she was relaying to you
 5 was that she was pretending to be asleep while he was doing
 6 that?
 7 A. Yes, sir.
 8 Q. Did she tell you that he had -- she had
 9 repeatedly told him to stop?
 10 A. No.
 11 Q. And did she tell you that he had asked what
 12 her age was after he had penetrated her vagina?
 13 A. Yes.
 14 Q. And she told him, and he said, quote, "Oh,
 15 that's scary"?
 16 A. Yes.
 17 Q. Did you have a picture in your mind of how she
 18 was laying on the couch at that time?
 19 A. I did have a picture in my mind, yes.
 20 Q. And how -- what -- what is in your mind?
 21 A. I pictured that, for thinking about a
 22 sectional, and A.P. being here, Kevin now being here, she
 23 is -- she is probably slouched into it a little bit, not
 24 necessarily being straight, sitting straight up, and her
 25 legs and waist would be almost level.

20

1 is penetrating her vagina with his finger or fingers and
 2 then he is fondling her breasts?
 3 A. Yes.
 4 Q. And then A.P. said that she started crying and
 5 continually told him to stop.
 6 A. Yes.
 7 Q. And then you say, "According to Leslie's
 8 statement" -- and I assume that's Leslie Rangel?
 9 A. Yes.
 10 Q. "A.H. told Kevin to go away, and Kevin
 11 replied, 'No, I'll stay down here with you guys.'"
 12 A. Yes.
 13 Q. And then A.H. started pushing Kevin and
 14 pulling him to get him away?
 15 A. Yes.
 16 Q. And did you confirm that with A.P. or did you
 17 just accept Leslie Rangel's statement?
 18 A. I just -- I just accepted her statement.
 19 Q. How did you come to speak with A.H.
 20 A. I was able to get her information from -- from
 21 A.P. and then I called her at the Elko Police Department.
 22 Q. And your responsibilities as the initial
 23 officer included calling A.H.
 24 A. No.
 25 Q. So you did that kind of on your own?

22

1 Q. She didn't tell you that she rolled over and
 2 pretended to be asleep?
 3 A. I don't recall.
 4 Q. And in -- she stated that Evan asked -- or
 5 Kevin asked if she would spread her legs for him?
 6 A. Yes.
 7 Q. And that she told him "no"?
 8 A. Yes.
 9 Q. Did you ask anything about how it was -- how
 10 all of this stuff wasn't coming to A.H.'s attention?
 11 A. Did I ask A.P. that?
 12 Q. Yeah.
 13 A. No, I didn't ask.
 14 Q. How come?
 15 A. Again, didn't come to mind at the time, sir.
 16 Q. I'm sorry?
 17 A. It didn't come to mind at that time.
 18 Q. And then Kevin asked A.P. if he could use his
 19 mouth, and she told him "no" again?
 20 A. Yes.
 21 Q. And the sequence is that he is fondling her
 22 vagina, and then after he fondles her vagina, then he
 23 grabbed her breasts and began to fondle them?
 24 A. Yes.
 25 Q. Okay. So that -- that sequence was first he

21

1 A. Yes, sir.
 2 Q. Okay. By that time, had the case been
 3 assigned to a detective?
 4 A. I don't recall if it had been assigned at that
 5 point.
 6 Q. All right. And this -- this phone call was
 7 not recorded either?
 8 A. No, sir.
 9 Q. And did A.H. tell you that she had trouble
 10 getting Kevin to go upstairs?
 11 A. She said he went upstairs without incident.
 12 Q. She did what?
 13 A. That Kevin went upstairs without incident.
 14 Q. A.H. said to Kevin that it's probably time to
 15 go upstairs and go to bed, and A.H. said that Kevin left
 16 without incident?
 17 A. Yes.
 18 Q. So there was no pushing or shoving?
 19 A. No pushing and shoving.
 20 Q. And A.H. was very clear that the only thing
 21 that Ms. A.P. had told her was that Kevin had touched her
 22 stomach?
 23 A. Yes.
 24 Q. And you had no further description of the
 25 stomach touching other than the word "touched"?

23

268

1 A. Yes.
2 Q. And did -- okay. And then A.H. told you she
3 didn't recall if anybody had tried to get into A.H.'s room?
4 A. Yes.
5 Q. Okay. Did you ask anybody, like A.P., what
6 purpose Mr. Mentaberry might have had in trying to bang on
7 the door and get in the room?
8 A. No.
9 Q. Do you know what was in the room?
10 A. I don't recall. I don't recall who was in the
11 room.
12 Q. Then you asked A.H. if Kevin was slurring his
13 words when he spoke or if he stumbled while walking. And
14 she told you he was -- he stumbled?
15 A. Yes.
16 Q. She did not tell you he slurred his words?
17 A. No.
18 Q. Did you ask her any conversation between Kevin
19 and anybody, whether she had overheard any of that?
20 A. I don't recall.
21 Q. And then you asked A.H. if she was still in
22 contact with A.H. and Ms. A.P.
23 A. I believe I did.
24 Q. And then A.H. told you that she and Ms.
25 A.P. -- you asked, I guess, if they had talked, if she had

24

1 Q. And she again in the written statement said
2 that he unbuttoned her pants?
3 A. Yes.
4 Q. And then, "He went inside the underwear and he
5 rubbed the outside of my vagina," she said?
6 A. Yes.
7 Q. And then he put his finger inside?
8 A. Yes.
9 Q. And then she said, "He wakens me up and asked
10 my age?"
11 A. Yes.
12 Q. Was that an indication that she was pretending
13 to be asleep?
14 A. Yes.
15 Q. "He wakens me up"? Did she say she was
16 pretending to be asleep?
17 A. Yes, I -- I annotated that in my report.
18 Q. I'm sorry?
19 A. I annotated that in my report.
20 Q. I still can't hear.
21 A. I put it in my report that she --
22 Q. I know you put it in your report, but she
23 wrote a report?
24 A. Right.
25 Q. And in the report, it doesn't say "I was

26

1 talked to Ms. A.P. about the events of New Year's Eve, and
2 that A.H. told you she only spoke with her the following
3 day, asking A.P. if she was okay?
4 A. Yes.
5 Q. And A.P. told her she was okay?
6 A. Yes.
7 Q. And they hadn't talked about the incident
8 since?
9 A. Correct.
10 Q. Okay. Were you ever told that Ms. A.P. had
11 talked to A.T., a girl named A.T. the next day?
12 A. No.
13 Q. It's customary for officers who respond, if
14 there are two of you, is for only one of you to write a
15 report, right?
16 A. Yes.
17 Q. An officer McKown didn't write a report?
18 A. No, sir.
19 Q. Then I guess you asked her to write a
20 statement, asked A.P. to write a statement?
21 A. Yes.
22 Q. And in that statement, did -- the statement
23 that A.P. wrote, she indicated that Mr. Mentaberry asked if
24 he could sit on the couch with them?
25 A. Yes.

25

1 pretending to be asleep and he tried to wake me up." But
2 she just said, "He wakens me up."
3 Okay. So she could have been asleep?
4 A. She told me that she was pretending to be
5 asleep.
6 Q. And then she said, "I finally told him to stop
7 and I was crying"?
8 A. Yes.
9 Q. And so up to that time, she had not indicated
10 she wanted him to stop?
11 A. Yes.
12 Q. And then she said, "It took a few times trying
13 to ask, then he finally goes upstairs when" -- well, wait a
14 minute. And she said, "My friend hears and tells him to
15 stop. And he tells him to go upstairs."
16 So she was kind of indicating that A.H. had
17 seen something.
18 A. It sounds that way.
19 Q. "My friend hears and tells him to stop."
20 A. (Nods head.)
21 Q. Okay. So you were under the impression that
22 A.H. had actually seen some of this molestation going on?
23 A. Yes.
24 Q. Then he took her home and he says -- "and all
25 he says when I get out of the car is "Sorry for being a

27

1 drunken idiot."
2 A. Yes.
3 Q. And then Ms. Rangel kind of indicated that she
4 had been told that A.H. noticed this molestation going on?
5 MR. THOMPSON: I'm going to object at this point,
6 Your Honor. The statement stands for itself. So if he's
7 just going to read it, we can just read the statement into
8 the record. But I would rather not have the officer
9 commenting on what's in it.
10 MR. WOODBURY: Oh, this is entered into evidence?
11 MR. THOMPSON: Yes, it is.
12 MR. WOODBURY: That would be fine. We'll let the
13 jury read it.
14 THE COURT: Okay. That is Exhibit?
15 MR. WOODBURY: That's Exhibit Number 3.
16 THE COURT: Three.
17 Is Number 3 admitted?
18 THE CLERK: Yes, Your Honor.
19 THE COURT: Three has been admitted. Very well.
20 Sounds like the question is withdrawn.
21 Next question.
22 Q. (By Mr. Woodbury) And how long did it take
23 her, A.P., to write the statement?
24 A. I would say a few minutes.
25 Q. And during the statement writing, she and

28

1 A. Yeah.
2 Q. Okay. And your police officer training tells
3 you what that means?
4 A. To me it -- it described discomfort, it
5 described closed off, shame, guilt.
6 Q. Yeah. But is that part of your training?
7 A. To interpret body language?
8 Q. Well, yes.
9 A. Yes.
10 Q. And so she was closed off and ashamed and may
11 have been feeling guilt?
12 A. Yes.
13 Q. And there is no way -- there probably is a
14 way, but you don't know what it is, to distinguish which of
15 those it might be?
16 A. Yes.
17 MR. WOODBURY: I have nothing further.
18 THE COURT: Redirect?
19 REDIRECT EXAMINATION
20 BY MR. THOMPSON:
21 Q. The -- as the initial officer, when you
22 interview folks, do you just, "What happened," and just let
23 them tell you?
24 A. Yes.
25 Q. It's more for the detectives then to follow up

30

1 Ms. Rangel were separated?
2 A. Yes.
3 Q. And where -- where was A.P.
4 A. I don't recall. I just knew I separated them.
5 Q. I'm sorry?
6 A. I just knew I separated them.
7 Q. And did you call anybody else besides A.H.
8 A. No.
9 Q. And the crying of A.P., can you describe it?
10 A. Her -- her eyes were red and glassy. There
11 were tears coming down both sides of her face, multiple.
12 Just she was crying.
13 Q. Did she continue to cry throughout the
14 interview?
15 A. No.
16 Q. How long did she cry? When did she start
17 crying, if you remember?
18 A. When I first started asking about it, and the
19 more she spoke, the less it was and -- it was kind of off
20 and on throughout the interview.
21 Q. And then you -- you kind of had a point of
22 view about her -- her body language and so on?
23 A. Yes.
24 Q. And that was she was looking down at the
25 ground?

29

1 and ask more probing questions?
2 A. Yes.
3 Q. Is it different when you are dealing with
4 juveniles?
5 A. Yes.
6 Q. And how is that?
7 A. For a juvenile sexual assault, typically I
8 would speak with someone who the information was already
9 disclosed to, such as a parent, a guardian, a counselor. I
10 get the information from them.
11 I would -- I would not ask the victim any
12 questions. I get all my information from a third party, if
13 you will, write my report and then send it up for
14 investigation.
15 Q. Okay. You didn't do that, though, in this
16 particular case?
17 A. Correct.
18 Q. How come?
19 A. I was a newer officer at the time. At the
20 time, my supervisor that day was Officer McKown, and he
21 joined me and he said, "Let's -- let's go talk to her."
22 And I said, "Okay."
23 Q. And do you know who the detectives were that
24 eventually followed up?
25 A. It was Detective Marshowsky.

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1 Q. And there is some specialized training when
2 dealing with children.
3 A. Yes.
4 Q. Is that your understanding of why they do it
5 that way?
6 A. Yes.
7 MR. THOMPSON: I don't have anything else for
8 him.
9 THE COURT: Any recross?
10 MR. WOODBURY: Thank you, Your Honor.
11 RECROSS-EXAMINATION
12 BY MR. WOODBURY:
13 Q. You have had explained to you, I assume, why
14 it is they don't want street officers interviewing
15 juveniles, right?
16 A. Yes.
17 Q. What are the reasons for that?
18 A. Revictimization.
19 Q. And is -- even different than that, they get
20 really nervous about asking leading questions, right?
21 A. Yes.
22 Q. And it's hard for a street officer to know
23 precisely what a leading question is of these juveniles?
24 A. Yes.
25 Q. And you have no particular recollection of

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1 comes out to you. Watch your step, please.
2 All right. Mr. Thompson, please proceed.
3 MICHAEL JAMES MARSHOWSKY
4 called as a witness in said case, having been first
5 duly sworn, testified as follows: direct examination
6 DIRECT EXAMINATION
7 BY MR. THOMPSON:
8 Q. Would you state your name and spell both your
9 first and last name, please.
10 A. Michael James Marshowsky, M-i-c-h-a-e-l,
11 M-a-r-s-h-o-w-s-k-y.
12 Q. And what is your occupation?
13 A. I'm a detective with the Elko Police
14 Department.
15 Q. And how long have you been a detective?
16 A. I have been a detective since 2014.
17 Q. And prior to that, did you have other law
18 enforcement experience?
19 A. I was patrol officer since I was hired at the
20 Elko Police Department in 2004.
21 Q. And as a detective, are you specially trained
22 in any certain types of cases?
23 A. Yes, I am primarily assigned cases involving
24 children. In 2014, I went to the National Children's
25 Advocacy Center in Huntsville, Alabama.

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1 the -- each word or each phrase that you spoke to Ms. A.P.
2 A. That is correct.
3 MR. WOODBURY: I have no further questions.
4 THE COURT: Any jury questions for Officer Craig?
5 While the jury is thinking about it, is Officer
6 Craig being held?
7 MR. THOMPSON: Just via phone, just like
8 everybody else.
9 THE COURT: Okay. I assume the prosecutor's
10 office has the phone number.
11 Rule of exclusion is invoked. So don't discuss
12 this case or your testimony with anyone while the trial is
13 going on. Just figure it's going to go on until you hear
14 from Mr. Thompson otherwise.
15 Any jury questions?
16 Appears not.
17 So we will let Officer Craig go.
18 THE WITNESS: Thank you, sir.
19 THE COURT: Thank you.
20 All right. Next witness, please?
21 MR. THOMPSON: Detective Marshowsky.
22 THE COURT: Detective Marshowsky, please come up
23 here with us. We'll have you sworn in.
24 (WHEREUPON, the witness was sworn)
25 THE COURT: Please take the witness stand. Door

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1 Also, in 2014, I went to "Corroborating the
2 Forensic Interview" in Salt Lake City. It was hosted by
3 the National Children's Advocacy Center.
4 In 2016, I attended the national law
5 enforcement training on enticement of children. It was
6 hosted by the Department of Justice in Atlanta, Georgia.
7 In 2017, I went to the 33rd International
8 Symposium on Child Abuse in Huntsville, Alabama. It was
9 hosted by the National Children's Advocacy Center.
10 In 2017, I attended child maltreatment
11 training hosted by the Washoe County District -- county,
12 Washoe County.
13 And in 2019, I went to advanced forensic
14 interviewing hosted by the National Children's Advocacy
15 Center in Santa Fe, New Mexico.
16 And also in 2019, I attended the national law
17 enforcement training on enticing children hosted by the
18 Department of Justice in Atlanta, Georgia.
19 Q. And so through all these trainings, I gather
20 there's something that is a bit different in investigating
21 when there is an allegation of child sexual assault?
22 A. That's correct. Typically, the way child
23 investigations go, they start with the child. The victim
24 child is the very first person interviewed. They are
25 usually interviewed by a forensic interviewer. A forensic

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1 interviewer's job is to interview a child in a
2 developmentally sensitive and legally sound method to
3 gather information regarding allegations of abuse or
4 physical violence.

5 In larger jurisdictions, it's -- these
6 interviews are done at a children advocacy center. They're
7 a non-law enforcement entity. The reason they are
8 interviewed by that entity is because they're -- you know,
9 they don't have any ties to law enforcement. They are just
10 gathering information from the child. That's their --
11 their primary focus.

12 After -- in most jurisdictions, these CACs are
13 funded by like the gaming board. States that have lottery,
14 these advocacy centers are funded by lottery. In larger
15 jurisdictions, like Las Vegas or Washoe County, they have
16 more money, so they are funded by the County.

17 In our rural agency, in our rural area, there
18 is no funding for CAC. There is a CAC here. It's called
19 Great Basin Children's Advocacy Center, and they do have
20 volunteer forensic interviewers that's been trained similar
21 to how I have been trained, although they have full-time
22 careers and often they are not available to do forensic
23 interviews.

24 And oftentimes there is a need, an immediate
25 need for the child's safety that the interview has to

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1 had one case that had nine victims, so I -- well over a
2 hundred interviews I have done, been involved in with
3 children.

4 Q. Okay. And were you called in to assist on
5 this particular case?

6 A. I was -- I was asked to do the forensic
7 interview.

8 Q. Okay. And when did you conduct that?

9 A. On January 30, 2018.

10 Q. Now, you talked about some of the timing as
11 far as when you can set these up and when you do them.

12 Were you aware that Officer Craig had first
13 heard of the disclosure on January 12, 2018?

14 A. No, I -- I know that Officer Craig was the
15 initial officer that responded to it.

16 Since I wear two hats as -- if I am an
17 investigator, if I'm the one that's been assigned to
18 investigate the case, I am very involved and know all the
19 details of the case because I am the investigator.

20 If I've been assigned a case as a forensic
21 interviewer, I am supposed to be an impartial person. I am
22 not supposed to believe the child during the interview. I
23 am not supposed to not believe the child. I'm not supposed
24 to assume the suspect is guilty or not guilty. I am just
25 like that private person that would work for a non-law

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1 occur, you know, on the child in the investigation's
2 schedule, not on another person's schedule.

3 So in the event that one of the volunteer
4 forensic interviewers is unavailable, there is two
5 detectives trained at the Elko Police Department
6 that interviews the child. And there is also two
7 detectives at the Elko County Sheriff's Office that
8 interviews the child.

9 Q. And so where do you conduct your interviews?

10 A. All the interviews are done at the Elko Police
11 Department that are for the CAC. The interviews for the
12 County is done at the police department. For Lander
13 County, Eureka County, they are all done at the police
14 department.

15 We have a special interview room set up that
16 is set up more like a living room of a house. It's more
17 comfortable, and it has couches and chairs and Play-Doh and
18 fidget spinners and coloring stuff for the kids. It's
19 more -- it's more a child-friendly interview process. It's
20 not set up like an adult interview room that is very bland.
21 And it's a recorded interview room.

22 Q. Okay. And how many of these interviews in
23 your career have you conducted?

24 A. I know I have been involved in over 90 cases
25 involving crimes against children. Some of the cases -- I

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1 enforcement agency.

2 Q. Okay. And so you getting involved on
3 January 30, is there any reason for that 18-day lapse from
4 the time of the initial report that you can recall?

5 A. I cannot -- I do not know. I'm sorry.

6 Q. Okay. Based on your training --

7 A. I was available on the 30th, I know that,
8 so...

9 Q. Sure. And based on your training and
10 experience, is that a huge delay or is that an issue?

11 A. For -- if the child is safe, that is not a bad
12 delay.

13 If it's an incident where the child is in
14 danger, the perpetrator lives in the home with them, the
15 interview needs to be done immediately, and we would
16 call -- we would find a county detective, a city detective,
17 a volunteer forensic interviewer, you know, because the
18 child needs to be removed from the home immediately.

19 Q. And in this case, you didn't have anything
20 like that?

21 A. No.

22 Q. And so when did you conduct this interview
23 with A.P.

24 A. I believe it was January 30, 2018.

25 Q. Okay. Do you recall if it was in the morning,

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1 in the afternoon?

2 A. I don't recall. I'm sorry.

3 Q. Okay. And this was held at that interview
4 room in the Elko Police Department?

5 A. It was held in the recorded interview room,
6 yes.

7 Q. And if your report read that you interviewed
8 her about two o'clock, would you have reason to disagree
9 with that?

10 A. No. The -- the -- the report of interview has
11 a time stamp. I'm sure it says two o'clock.

12 Q. Now, so as you are doing these interviews, I
13 assume you are obviously listening to the words of the --
14 of the child, but you -- are you also observing their
15 behavior?

16 A. Yes, I am.

17 Q. Okay. And what are you looking for?

18 A. Well, during -- initial -- there is different
19 phases of the interview. It's actually broken down, it's a
20 very in sync thing, and there's going to be different
21 behaviors of the child that we're interviewing during each
22 phase.

23 So I don't know if that answers your
24 question.

25 Q. Okay. Would it help to go through those

40

1 The third part of the interview is what we
2 would call the rules or instruction phase of the interview.
3 There is four rules that we explain to the children along
4 with examples.

5 One of the things that we -- we tell the child
6 is if we ask a question and they don't know, not to guess
7 for the answer. And I usually give the example of, "What
8 did I have for breakfast?" And the child usually says, "I
9 don't know." If the child would say, "You had bacon and
10 eggs" -- and usually younger children are trained that if
11 an adult asks you a question, you should answer them, so
12 they will make stuff up. So if somebody, you know, a
13 younger child or a child I am interviewing gives me an
14 answer after I told them don't -- you know, "Don't guess,
15 tell me 'I don't know,'" I would explain to them the
16 importance that "You didn't know what I had for breakfast
17 but you said."

18 The second rule is if -- to correct me if I
19 make a mistake. During the disclosure phase, a lot of
20 times the children will get really sidetracked, start
21 talking about the horrific thing that happened to them. So
22 all of us, when we are under pressure, will lose our train
23 of thought, so we'll repeat back to child, "You were
24 telling me X, Y and Z," and it puts them back on track to
25 where we were going.

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1 different phases then?

2 A. Yes. The very first phase is we would bring
3 the child into the interview room. And, of course, each
4 interview can be extremely different because we interview
5 children from the ages from the time they can talk up to,
6 you know, 18 and a half years old.

7 I find this interview technique very helpful.
8 I even use it for adult sexual assault victims. It's --
9 it's comforting for them. It's better than a police
10 interview.

11 But anyway, during the very first phase, it's
12 called the introduction, where I introduce myself, I
13 explain the process of why we're there speaking with them,
14 and I address any questions or concerns they may have at
15 that time.

16 Typically, during this part of the interview,
17 the children are extremely apprehensive. They are very
18 scared. They are talking to a complete stranger about
19 probably a very horrific thing that happened to them.

20 The next phase in the interview is called
21 rapport building. During rapport building, we talk about
22 subjects that are interesting to the child. The reason we
23 do this is to encourage conversation, to ease their --
24 their nerves, make them feel more comfortable, and to get
25 to know more and more about their day-to-day life.

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1 So that's the part where I would give the
2 example of -- that's the -- so for the -- I have got a
3 really dry throat, sorry. For the instruction during
4 the --

5 THE COURT: We can get you some water if you
6 want.

7 THE BAILIFF: Would you like a bottle of water,
8 sir?

9 THE WITNESS: May I? I'm sorry, I've got extreme
10 cotton mouth.

11 A. During the "correct me if I make a mistake"
12 phase, I usually throw out during the rapport building
13 stage, if they told me that they had a cat named Willie, I
14 will say, "Remember when we were talking about your dog
15 named Oscar," and I am looking for the child to correct me,
16 saying "No, I didn't say that. I said I had a cat."

17 A lot of times throughout this whole phase, I
18 will continue making mistakes on purpose to be corrected by
19 the child so that later on, when the interview is watched,
20 people can see that the child understands the rules.

21 Excuse me. Thank you for the water.

22 The -- the next rule that we would talk about
23 is if I ask them a question they don't understand, to tell
24 me, "I don't understand." So when we ask a child a
25 question, we want -- you know, children have different

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1 slangs and, you know, talk differently than an old man like
2 me. So I want to make sure that we completely understand
3 each other.

4 I tell them that -- usually the example that I
5 throw out to them is I ask them what your ocular hue is,
6 and generally they say, "I don't understand." And then I
7 will ask them what their eye color is. So that -- a lot of
8 times later on in the interview, in order to make sure I
9 understand the child, I will tell them, "I don't
10 understand," and they will explain it to me in different
11 words.

12 And the last rule we talk about is true and
13 real. I ask them do they know what true and real is. You
14 know, we just finish that up that it's extremely important
15 to tell the truth and there's no speculation or
16 embellishment or anything added to the story, only the
17 truth of what we're talking about.

18 Then the next phase of the interview is what
19 we call narrative practice. What we are trying to do
20 during this practice is to train the child, so when we get
21 to the disclosure phase, in how we want them to talk about
22 what we're talking about.

23 So usually we talk about one or two topics.
24 Forensically, I typically go to an event that we talked
25 about during rapport building. So if they told me about,

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1 chair. They're relaxed. They start talking with their
2 hands or smiling. They interact. They are interactive
3 with the thing.

4 Then usually, during narrative practice, they
5 are usually happy and, you know, communicating really well.
6

7 There is usually a significant change when we
8 get to talking about, you know, something that they are not
9 very happy about. It will be very difficult for an adult
10 to tell a complete stranger that they have known about 15
11 minutes about a sexual experience in their life. And
12 typically, I am asking the child to tell me about a sexual,
13 nonconsensual assault or abuse by an adult, so their --
14 their demeanor does typically change. They -- they cry.
15 They won't make eye contact.

16 Sometimes I volunteer to get -- I'm a big man,
17 so a lot of times during this -- this time, I will sit on
18 the floor. Sometimes I act like I am not paying attention
19 to them, like I am looking -- I'll look away from them.
20 It's very difficult for them. So usually during that
21 phase, it's really bad.

22 And then the final phase when we -- in the
23 interview is we go back to a rapport building. We enter
24 the -- you know, talk about things they want to talk about.
25 And hopefully, during the closing of the interview, the
child becomes, you know, better than when they were during

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1 you know, a certain time playing basketball, I'll say,
2 "Tell me about the last time you played basketball."

3 And what we're trying to do there is to train
4 to get their episodic memory working. We are also trying
5 to train the child that when they are talking to us, we
6 want details.

7 And after the narrative phase, we go into
8 family. We talk about who they live with and stuff like
9 that.

10 And then the -- the next phase is when we get
11 into the why they are there speaking with us, and I ask
12 them a question typically, "Do you know why you are
13 speaking with me today" or -- and then we go from there.

14 So the foundation that I have set -- set prior
15 to, hopefully the child during that part will speak freely
16 an openly.

17 So back to what you are saying, the phases.
18 Normally during the rapport building phase, I am hoping --
19 normally during the introduction phase, the child is very
20 afraid. They are usually sitting with a closed posture,
21 hands in their lap, feet on the floor, you know, really
22 tense and nervous. Nobody will -- will talk to you during
23 that part.

24 So during rapport building, we want the child
25 relaxed. Hopefully, they open up. They sit back in their

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1 the disclosure phase.

2 Q. And so did you follow all of these -- that was
3 a fairly long answer, but in describing this, did you
4 follow all of these protocols and these procedures when you
5 interviewed A.P. in this case?

6 A. Yes, I did.

7 Q. And could you describe her demeanor when
8 you -- during the introduction phase of it then?

9 A. During the introduction phase, she was -- her
10 feet were flat on the floor, her hands were in her lap,
11 like this. She had a very closed posture. She went to a
12 posture of putting her hand on her head, I believe, and her
13 arm rested on the couch -- or her elbow and arm rested on
14 the couch.

15 Q. Okay. And then did her posture then change as
16 you went through the different phases of the interview?

17 A. Yeah. During the rapport building, she
18 became -- she switched from sitting in the couch, like
19 this, you know, like I'm sitting over there, instead of
20 sitting, she turned to face me, like this. She put her leg
21 up on the couch. She is talking to me. She is moving her
22 hands. She is giggling and she is interactive.

23 Q. And what kind of things were you talking about
24 during the rapport building?

25 A. During rapport building, we talked about her

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1 liking volleyball, her liking basketball. We talked about
2 her being a journalist on her school newspaper. We talked
3 about her dogs. I believe she said she had four dogs. We
4 talked about, I believe, bird hunting.

5 Q. And so did she appear to be comfortable to
6 you, talking about those things?

7 A. She did.

8 Q. Okay. And so then after the rapport building
9 phase, you then moved into the rules with her?

10 A. Yes, I did.

11 Q. Do you remember anything in particular about
12 that?

13 A. I don't remember anything.

14 Q. It was fairly standard going through the
15 rules, though?

16 A. Yes.

17 Q. And you are dealing with a 14-year-old?

18 A. Yes.

19 Q. So in your experience, as you are getting into
20 the teenager years, do they understand these rules a little
21 bit easier?

22 A. They are -- they are -- they are extremely --
23 I -- I prefer interviewing older teenagers because they
24 understand the rules. It's difficult when you are
25 interviewing a three- or four-year-old. They have a

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1 Q. And so she was able then to establish some
2 narrative at that juncture?

3 A. Yes.

4 Q. Sufficient for you to feel like you could
5 proceed then through the interview process?

6 A. Yes.

7 Q. So then what was the next step?

8 A. We talked about her family, and her demeanor
9 was still communicative.

10 Q. Okay. And then the next step?

11 A. The next step, we went into the disclosure
12 part. And I had asked her, "Do you know why you are here
13 talking with me today," I believe.

14 And she said, "I reported something."

15 And then I asked -- I could tell, based on her
16 demeanor, that she was -- you know, was changing, so I
17 asked her, "How do you feel talking with me today?"

18 And she said, "I don't like talking about it."

19 And during this time, she puts her -- she was
20 wearing a beanie, and she put her hand above her head like
21 that, and she is looking at me, sort of had to look over
22 her glasses like she was trying to hide from me.

23 Do you want me to keep talking about other
24 behaviors I saw or --

25 Q. At that juncture, yes.

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1 difficult time staying on the rules.

2 Q. Okay. Did she have any issue with the rules
3 that you can recall?

4 A. I don't recall any.

5 Q. Okay. Then after going through the rules,
6 what's the next phase you go to?

7 A. We went to the -- the narrative practice. I
8 attempted to talk to her about a basketball game, and that
9 was a very poor move on my part. I should have known
10 better.

11 You sort of want to pick an event that's --
12 that's unique for the child. Remember -- like if I would
13 ask a person, "Tell me about the time you went to
14 McDonald's," people get really confused because they have
15 eaten at McDonald's so many times. You know, it's --
16 they're, "I don't know, I go to McDonald's and I eat."

17 So we tried to talk about McDon -- her
18 basketball game, but it was in sixth grade and it was --
19 she didn't recall the basketball game where her glasses got
20 knocked off. So I could see that I wasn't going to be able
21 to set a baseline for narrative practice, and it wasn't
22 working as I planned.

23 So then we switched to the last time she went
24 hunting. And she talked about in-depth going, I believe,
25 deer hunting with her stepfather.

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1 A. She stopped talking with her hands. She
2 stopped giggling. When it got to the point that -- about
3 the touching part, she did ask to play with the Play-Doh.

4 And when I had started the initial -- all my
5 interviews, I have Play-Doh on the table and I have a
6 fidget spinner. Fidget spinners are sort of out of date
7 now. When I first started this, every kid -- every kid
8 would take the fidget spinner, and now the fidget spinner
9 is just very few.

10 But anyway, normally we start the whole
11 interview playing Play-Doh. I play with Play-Doh or I
12 color with them. You know, it's an interactive process.

13 So she, at the beginning of the interview, did
14 not want to play with the Play-Doh. And a lot times when
15 that happens, I'll pick the Play-Doh up and I'll start
16 playing with it, you know, because this is -- you know,
17 it's a very menial thing, you know, we haven't yet got into
18 the rapport building, so a lot of times the child will say,
19 oh, he's playing with it, I'll play with it too. And I
20 played with it for a few minutes, and she did not play with
21 it.

22 But when it got to the point where we got to
23 the touching, she asked if she could play with the
24 Play-Doh. And she reached for the Play-Doh and started
25 playing with the Play-Doh.

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1 Q. And that is significant to you why?
2 A. It was a significant change in behavior. She
3 wasn't bubbly, happy, talking with her hands, giggling
4 anymore. She was, you know, distraught about what we were
5 talking about.
6 Q. Okay. You mentioned that she referred to that
7 she reported something. Did she use other vague terms like
8 that?
9 A. She said "it." It's -- she said, "I don't
10 like talking about it."
11 I do recall another significant behavior. If
12 I could go back. When she did get to the touching, she did
13 put her -- her hand over her mouth and said, "Sorry."
14 And a lot of times children blame themselves
15 for what happened to them. They think they are going to
16 let their parents down. They think that they put their
17 self in that position.
18 A lot of times perpetrators have done a lot of
19 grooming to the child. They feel like they are -- you
20 know, they have established a relationship with the
21 perpetrator, so they feel like they are -- so that "I'm
22 sorry" was very consistent with those -- for those reasons
23 I had said.
24 Q. Was she losing her composure at that point?
25 I just wonder if she was like "I'm sorry, I

1 Exhibit 15 -- 14.
2 Q. This is the video you used at the preliminary
3 hearing?
4 A. Yes, I believe so. If it has the same writing
5 on it.
6 Q. Do you wish to see --
7 A. Yes.
8 Yes, it is.
9 MR. THOMPSON: We would like to offer that at
10 this time, Your Honor. We're not going to play it, just so
11 you know, just for time's sake. But we did want to offer
12 it into evidence.
13 THE COURT: Okay. What is the length of it?
14 THE WITNESS: It's 40 minutes.
15 THE COURT: Forty minutes, okay.
16 The exhibit number again, please?
17 MR. THOMPSON: For this hearing, it's 14.
18 THE COURT: Fourteen for identification.
19 Any objection?
20 MR. WOODBURY: Yes, Your Honor. I think we would
21 like to have the -- I would request the Court withhold its
22 ruling on admissibility of it until after
23 cross-examination.
24 THE COURT: All right. Court will do that.
25 Q. (By Mr. Thompson) And then while you had her

1 have to gather myself," or anything like that?
2 A. I don't believe so. It -- it's on the video,
3 but I don't recall that.
4 Q. Any other behavior changes that you can
5 recall?
6 A. Not that I recall.
7 Q. Do they say "sorry" sometimes like they're
8 afraid to talk about these things in front of you, like
9 they're going to offend you? Does that ever happen?
10 A. Yeah, I think so. I usually try to ease their
11 minds that it's okay to tell me.
12 Q. And going back to the "something" and "it,"
13 was that something that she said a lot or is that just
14 initially referring to --
15 A. I just recall it initially, yeah.
16 Q. Do you remember what she was talking about
17 when she said "sorry"?
18 A. I believe when she started disclosing that --
19 about being rubbed on her stomach.
20 Q. And then you said this video was -- this whole
21 interview is recorded?
22 A. The entire interview is recorded from start to
23 finish. Every single interview I do with everybody is
24 recorded.
25 MR. THOMPSON: Okay. We have that marked as

1 in there, did you have her make a drawing of sorts?
2 A. I did.
3 Q. And what was that about?
4 A. It was the -- the layout of the bed -- of the
5 living room basement area where the alleged incident
6 occurred.
7 Q. Showing you Exhibit 1 here. Is this the
8 drawing that she did?
9 A. Yes, it is.
10 Q. All right. And she has her initials on top,
11 and the date?
12 A. Yes.
13 MR. THOMPSON: We are going to offer Exhibit 1.
14 MR. WOODBURY: We have no objection.
15 THE COURT: Exhibit 1 for identification is
16 admitted. It is now Exhibit 1.
17 (WHEREUPON, State's Exhibit 1 was admitted into
18 evidence)
19 Q. Okay. Now, so this is her drawing on
20 January 30. Is this your handwriting up here at the top?
21 A. That is Detective Morrell's. It's his case,
22 and I -- I gave it to him after the interview.
23 Q. And then he would have been the one who had
24 entered it into evidence?
25 A. That's correct.

1 Q. Okay. Could you describe for us what we're
2 looking at here, how she described it for you?
3 A. This is a L-shaped couch. This is a
4 television. This is a bedroom window -- window facing to
5 the outside. This is a window facing outside. This is
6 steps coming down into the living room area.
7 She described -- it's not really drawn in
8 here, but she described this as being -- am I allowed to
9 say her name?
10 Q. Sure.
11 A. A.M.'s room. She described this area over
12 here as being Mazy's bedroom.
13 This drawing here is supposed to be A.H. That
14 is her head down here with nothing down here is supposed to
15 be feet. This is A.P. This is supposed to be her head with
16 her feet facing that way.
17 Q. So A.P. -- I know you referred to her as A.P.
18 We are going to use her name.
19 A. Okay, A.P.
20 Q. Okay. And what are the other parts?
21 A. These two drawings, one is supposed to be
22 Mr. Mentaberry, one is supposed to be the dog.
23 Q. Okay. Do you remember which one is which?
24 A. I don't -- I don't recall.
25 Q. Okay. Did she explain that to you, though,

1 while you were there?
2 A. Yes.
3 Q. So that would be on that video?
4 A. That would be on the video.
5 Q. And when she was playing with the Play-Doh
6 and -- and describing this, was she making eye contact with
7 you at that time?
8 A. She was not.
9 Q. And in your review of the video and looking at
10 it, did it comport with all of your training as far as a
11 forensic interviewer?
12 A. It did.
13 Q. Okay. Now, you are aware that Officer Craig
14 did talk to A.P. when he went out there at the scene back
15 on January 12?
16 A. I -- I assumed so, yes.
17 Q. Okay. Is that the best practice, to have a
18 street officer talk to the child victim?
19 A. That is absolutely worst practice. They are
20 not supposed to do it.
21 Q. Okay. And how is it that that could affect
22 things?
23 A. Typically for -- if the child is being not
24 asked open-ended questions by an untrained person, that may
25 traumatize them, the way that they are being asked.

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1 If the victim is traumatized, they may not
2 participate well. The very first contact the person has
3 with law enforcement sets the stage. If this child has
4 poor initial contact with the responding officer, it makes
5 the investigation really difficult.
6 And another thing is children's account of
7 what happened or how it happened will change the more they
8 are interviewed, and a lot of that is based on how the
9 questions are asked. You know, if -- you know, back to the
10 McDonald's thing, if I ask, "Did you have a milk shake?"
11 "Yes." "Then you had French fries?" "Yes."
12 And so the child is -- because typically
13 officers will ask information-seeking questions with a
14 simple yes or no.
15 When they come interview me, I will tell them,
16 "Tell me about McDonald's." And maybe they didn't -- you
17 know, they remember having the -- the hamburger first and
18 then the milk shake. And the order changes because they
19 are recalling from episodic memory.
20 And a lot of times, too, during the disclosure
21 rate -- or during the disclosure portion, we go into
22 cognitive recall.
23 And what we do is we back things up. It's
24 like losing your car keys. When you lose your car keys,
25 you can't remember where they are, so people typically

1 retrace the day. Well, I got up, I went to work, and I
2 went to -- so I had them when I was at work, then I went to
3 the grocery store. So they retrace. They get to the point
4 where they don't remember having their keys and then they
5 can go back and find them.
6 That's what we do during the disclosure thing.
7 We typically back the person up to the morning
8 of. We start having them tell us through the day, and they
9 remember in greater detail, details of the whole day. So
10 when it comes time to the incident, they will also remember
11 more. So their story will be different than they told the
12 initial officer.
13 Q. So a concern is that the story will change and
14 the concern is that it retraumatizes the child. Am I
15 understanding you correct? Or are they connected, those
16 two?
17 A. I am -- as a forensic interviewer, it's all
18 about the child for me. We don't want to revictimize them.
19 As a forensic interviewer, I know that it's common for a
20 child's story to change about horrific things, especially
21 if it's occurred to them for years and years, multiple
22 times. There are so many incidences that they can't -- it
23 depends on which incident you are talking about.
24 So me as a forensic interviewer, I am not
25 concerned that their story will change. I am expecting

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1 their story to change. But what concerns me is people that
2 don't understand that, you know, the lay person, that they
3 think the child is lying because their story has changed.

4 MR. THOMPSON: I don't think I have anything else
5 for the detective at this point. Oh -- I do.

6 No, sorry. I'm done.

7 THE COURT: You are talking to yourself.

8 MR. THOMPSON: Yes, probably so.

9 THE COURT: You've convinced yourself that you
10 are done?

11 MR. THOMPSON: I have, thank you.

12 THE COURT: Okay. Over to cross-examination.

13 MR. WOODBURY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WOODBURY:

16 Q. So I guess, Detective Marshowsky, by the time
17 that -- in the 2017 interview -- the 2018 interview, you
18 had been at this three years?

19 A. I started 2014, this happened -- '15, '16,
20 '17. Yeah, I had three full years of forensic interviewing
21 in, starting my fourth year.

22 Q. And a lot of the education that you described
23 took place after this interview, that you have learned some
24 new things?

25 A. Yes, a lot of the education that I've -- I've

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1 demonstration of -- of talking about some of the education
2 received and the changes, right?

3 A. Um-hmm.

4 Q. Why did you answer it that way?

5 A. Because the -- the interview process that I do
6 today is the same that I did in 2017, or the same as --

7 Q. And if I asked you that question, you would
8 have answered it, right? But I didn't. I asked you if
9 some of the education took place after the interview of
10 A.P.

11 A. Yes, I have received a substantial amount of
12 education since that -- that interview.

13 Q. So what should the jury conclude about your
14 mindset when you go on and you explain endlessly -- not
15 endlessly, but quite a while about what kind of education
16 happened afterward?

17 Should they conclude that you intended to
18 answer the question?

19 MR. THOMPSON: I'm going to object, Your Honor,
20 about having him comment on what the jurors should
21 conclude. I think that's out of his purview.

22 MR. WOODBURY: What does he want them to
23 conclude.

24 THE COURT: That's a different question.

25 MR. WOODBURY: I'm sorry?

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1 received came after this incident, but the -- part of the
2 education is like continuing education, things change, and
3 it's to stay updated.

4 For example, when this case became available
5 and we investigated, the national protocol at the time was
6 the forensic interviewer was supposed to know the minimal
7 facts of a case. Like victim is saying they were sexually
8 assaulted by a relative. And so during the interview, it
9 was really hard to get on subject, it was like playing 20
10 questions.

11 Since that time of this interview, some of the
12 like continuing education, that protocol has completely
13 changed; whereas now the investigator tells the forensic
14 interviewer everything that they know about the case so the
15 forensic interviewer could go right to, you know, to where
16 they need the information gathered that they need to get is
17 there.

18 So does that answer your question, Mr.
19 Woodbury?

20 Q. What was my question?

21 A. That I went to a lot more education since the
22 time --

23 Q. After the event?

24 A. After, yeah.

25 Q. Okay. And your answer included a

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1 THE COURT: That is a different question. Okay.

2 A. I want them to conclude that -- that the
3 technique that I used then hasn't changed based on the
4 education I have received. It's still the same protocols.

5 Q. What I want the answer to is why did you go
6 on? Why did you go on to the entire explanation of what
7 the new education was when I asked you a simple question,
8 was some of the education after this interview?

9 A. I thought I was being thorough in answering
10 your question. I'm sorry I was too thorough.

11 Q. Okay. And you are no different, I guess --
12 from your training and experience, you are no different
13 from the rest of us. We all have aspirations when we talk,
14 how the people will hear it and what we are saying?

15 A. I'm -- I'm here as a witness. I was just
16 giving you -- I thought I was answering your question.

17 Q. Okay. All right.

18 So when you are interviewing a child in a --
19 in a sexual abuse case, you are drawing conclusions about
20 the child's thought processes while you are interviewing
21 them?

22 A. I'm afraid I don't understand. Drawing
23 conclusions.

24 Q. What about their thought processes while you
25 are interviewing them?

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1 A. I am afraid I don't -- I don't understand,
2 Mr. Woodbury.
3 Q. Well, you asked A.P. a question, and if she
4 looks down or puts a hand over her eye for a moment, you
5 draw conclusions about that, right?
6 A. Yes.
7 Q. Okay. And those conclusions are told to you
8 in your training and experience to -- to have a single
9 meaning. If she puts her hand over her eye, that means she
10 is down, she doesn't want to talk about it, she is
11 embarrassed?
12 A. It does not have a single meaning. It could
13 have been multiple meanings.
14 Q. I'm sorry?
15 A. It could have multiple meanings.
16 Q. Okay. So throughout the conversation that you
17 had with the prosecutor and your description of all this,
18 there isn't a single meaning to any of this. They all have
19 multiple meanings, what -- what a child does or says,
20 right?
21 A. Those were my conclusions that I told you
22 about. Somebody else's conclusions may be different than
23 mine.
24 Q. And so to the extent that that's true, you are
25 only one person offering a conclusion, and there are other

1 abuse cases.
2 A. Excuse me, sir?
3 Q. The only thing I'm asking you about is sexual
4 abuse cases.
5 A. Okay.
6 Q. I am not talking to you about any other kind,
7 violent cases against kids or adults.
8 A. Okay.
9 Q. Just this one.
10 A. Okay.
11 Q. That's true that they do have -- you do
12 normally do forensic interviews of child sexual abuse
13 cases?
14 A. Yes.
15 Q. Okay. You are the first forensic interviewer
16 of those kind of cases in Elko?
17 A. No, I am not.
18 Q. Who preceded you?
19 A. Who were forensic interviewers before I was?
20 Q. Yeah.
21 A. Lieutenant McKinney with the Sheriff's Office.
22 Zach Hessing, who used to be a detective at my police
23 department, and he no longer works there.
24 There was other forensic interviewers before
25 me, but I am not aware of -- aware of them all.

1 people out there who have the same expertise as you -- or
2 maybe more -- who might reach different conclusions?
3 A. Yes, I believe so. Everybody's entitled to
4 their conclusions, and they may interpret those things
5 differently than me.
6 Q. And your conclusions are colored by your
7 experience as a police officer?
8 A. By my forensic interview training.
9 Q. And -- and your life experiences as a police
10 officer, right?
11 A. I -- I assume so, yes.
12 Q. Yeah. Just like the rest of us. If you have
13 an occupation or an education, some of your conclusions are
14 a consequence of those, right?
15 A. That's correct.
16 Q. Yeah. Now, your job with respect to this case
17 was to conduct the forensic interview, right?
18 A. That's correct.
19 Q. And in every case of a child -- a claimed
20 child sexual abuse, a forensic interview is had, right?
21 A. Not -- just any type of -- it doesn't
22 necessarily have to be sex abuse. It could be physical
23 abuse. It could be exposure to violence if they see a lot
24 of domestic violence incidents between their parents, so --
25 Q. The only thing I am asking you about is sexual

1 Q. Is there any differentiation made between
2 whether -- the gender of the person who conducts the
3 interview and the gender of the alleged victim?
4 A. Could you -- could you -- I don't understand.
5 Q. In your training and experience, are they --
6 in order to conduct a good interview and get a good result,
7 does -- is the gender of the interviewer and the gender of
8 the alleged victim taken into account?
9 A. We want the child to feel most comfortable.
10 If it's a nonemergent forensic interview, the -- there is a
11 question there that we would determine the best interviewer
12 for the child.
13 But if it's an emergency forensic interview,
14 it just has to happen. We -- we don't take into account
15 gender.
16 Q. And was this a -- an emergency?
17 A. I don't believe so.
18 Q. And in your training and experience, are
19 female forensic interviewers a better pick for interviewing
20 female alleged victims?
21 A. You want my opinion on --
22 Q. No, I just want to know if --
23 A. Or my opinion based on my training and
24 experience?
25 Q. No. I just want to know if you are aware

1 whether or not there is a -- that is a part of -- of the
2 conclusions of people who would have trained you and are
3 knowledgeable about forensic interviews.

4 A. Typically, males have a real hard time
5 disclosing to another male interviewer. So if it's a male,
6 we try to avoid a male interviewer.

7 If it's a female, based on my experience,
8 it -- it's -- it depends, you know. It -- whether -- if
9 the person has been abused for a long time by males, a male
10 interviewer is bad. If the victim is interviewed by a --
11 has been sexually abused by a female for a really long
12 time, a female interviewer is bad. Each case is different.

13 Q. Okay. If I understand, when you began to
14 conduct this interview with Ms. A.P., you had not read or
15 heard about Officer Craig's interview?

16 A. We were following protocol at the time. We
17 don't -- we don't -- the protocol where the forensic
18 interviewer was -- just knew the minimal facts, what he
19 needed -- or she needed to know to do the interview.

20 So I don't -- I don't recall being told
21 anything about the case except for it occurred on New
22 Year's Eve at A.M.'s house.

23 Q. Okay. And my question went to whether or not
24 you were aware of the content of Officer Craig's --

25 A. No, I was not.

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1 interviewing especially young children is then being
2 coached by a parent to say things when they are
3 interviewed. So I would be concerned of coaching and not
4 lying.

5 I don't know if that answers your question or
6 not.

7 Q. And you were aware, I guess, that this had
8 come to your attention because a mandatory reporter named
9 Leslie Rangel had been informed of it?

10 A. I had no idea how it came to our attention.

11 Q. And I read your report. I -- I don't see
12 anything where you ever took into account the fact that the
13 child was on medication, didn't ask about it?

14 A. I did not ask about it.

15 Q. How come?

16 A. That's -- typically we don't do. During a
17 forensic interview, we're asking a child to disclose
18 something, and if you start asking about medication or drug
19 use or this or that, if you're victim shaming them and, you
20 know, they are probably not going to answer truthfully. We
21 are not there to judge a child. We are there to gather
22 facts.

23 Q. Well --

24 A. But although in the intake process of the CAC,
25 that would be one question that they would ask, and they

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1 Q. You weren't even aware he had interviewed her?

2 A. I believe -- I don't believe I was aware.

3 Because if I was aware, I probably would have said, "The
4 child's been interviewed, and we are going to traumatize
5 her more by interviewing her a second time."

6 Q. Well, it's worse than traumatizing, isn't it?
7 It's -- it's also the case that a police officer who is
8 untrained in forensic interviewing may be suggesting
9 answers to her, right?

10 A. That's correct.

11 Q. Yeah. And might put her in a position where
12 she has told one cop one thing and now she is being asked
13 to tell the truth to the other cop, but she is in a
14 position where she is really stuck. She -- she gets in a
15 position where she might have to lie to the -- to the
16 forensic interviewer, right?

17 A. I don't know.

18 Q. Well, isn't that one of the things that --
19 that you look at and are trained in, is that it's hard to
20 back out of a lie?

21 A. You got me afraid to answer how I want to
22 answer because then you say, "Well, you go on this big long
23 thing." So if I'm answering -- not answering your
24 question, please stop me.

25 One of the -- one of the concerns about

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1 would tell the forensic interviewer if the child is on
2 medication.

3 Q. An intake process of what?

4 A. On -- on a CAC, if the child went to a CAC.

5 Q. What's a CAC?

6 A. Children Advocacy Center. A Children Advocacy
7 Center.

8 Q. Ah.

9 A. That was -- there's a process that they
10 would -- or they would get that information for the
11 forensic interviewer, and he would know -- or she would
12 know that before the interview. But we would not ask about
13 it during the interview.

14 Q. And if you knew that the child had been
15 prescribed Lamictal at the time and was -- by a
16 psychiatrist in Las Vegas, A.P. had been prescribed
17 Lamictal, would your -- would you have conducted the
18 interview differently?

19 A. No. It's a standard interview. The forensic
20 interview, I am just there gathering information.

21 Q. Right. But gathering information from a child
22 who has mental health issues is different than gathering
23 information from a child who doesn't?

24 A. I've no training on -- on interviewing kids if
25 they have been prescribed medication, psychiatric

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1 medication, so I can't answer your question.
 2 Q. You described A.P. as developmentally
 3 advanced. And does that mean she appeared to have
 4 characteristics that were -- appeared to be -- she appeared
 5 to be more mature than 14 or 15 years old?
 6 A. She just acted mature, yes. She didn't act --
 7 a lot of times, you know, you can interview a 16-year-old
 8 that acts like an 8-year-old, and an 8-year-old that acts
 9 like a 16-year-old. She acted like older than a
 10 14-year-old when we spoke, yes.
 11 Q. Okay. And you didn't see a sign of a tear
 12 that day, did you?
 13 A. I don't recall one.
 14 Q. Even when the -- the issues were -- were tough
 15 for her to be talking about, no crying at all?
 16 A. I -- I did not see a tear.
 17 Q. There is a -- if I understand correctly, you
 18 had one role to play in this case, and that was to conduct
 19 the forensic interview?
 20 A. That's correct.
 21 Q. All right. And who was the detective that was
 22 to conduct the additional investigation?
 23 A. Detective Corporal Norrell was assigned the
 24 case.
 25 Q. Okay. And that, as Elko Police Department

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1 about things that put most police officers to sleep.
 2 We talk about the color of the walls. We talk
 3 about the bed sheets. We talk about the curtains. We talk
 4 about absolutely -- what they were wearing, we talk about
 5 everything.
 6 So during the investigative phase, the
 7 investigator should corroborate anything that was said
 8 during the interview, no matter how unimportant they may
 9 think it was.
 10 Q. All right. And as a forensic interviewer, you
 11 are taught to detect deception on the part of the person
 12 you're interviewing?
 13 A. Absolutely not. We are gathering information.
 14 A forensic interviewer doesn't believe the child, doesn't
 15 not believe the child. We let the child disclose and talk
 16 about what we're talking about.
 17 It's up to the investigator to corroborate
 18 what was said during the interview. Corroboration will
 19 determine if the child was being truthful or not truthful.
 20 Q. And so that's just -- that's just not part of
 21 your job?
 22 A. When I'm the lead detective and I don't do the
 23 forensic interview, I do all the corroboration. When I'm
 24 assigned to be the forensic interviewer, I stay uninvolved
 25 of the case, in case during his investigation other victims

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1 practice, means that if there was additional investigation,
 2 he would have conducted it?
 3 A. Yes, sir.
 4 Q. And it is part of the protocol, is it not,
 5 that the -- there appears to be a -- well, say it again.
 6 Part of the protocol is that there is
 7 follow-up investigation to determine if there is
 8 corroboration for what the child has said?
 9 A. That is correct.
 10 Q. And if that investigation doesn't take place
 11 and there is no corroboration, should you be nervous about
 12 it?
 13 A. Could you reask the question.
 14 Q. Well, from my point of view, I guess, you came
 15 in here and you have described this child as reacting in
 16 the typical way that a sexual abuse victim would react,
 17 right?
 18 A. That's correct.
 19 Q. All right. And from that, that -- that gets
 20 to be a kind of -- it's what she said and just assuming all
 21 the other facts line up with what she said. Right?
 22 A. Hopefully this answers your question,
 23 Mr. Woodbury.
 24 Corroboration is an extremely part of the
 25 forensic interview. During the forensic interview, we talk

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1 come out or the child needs to be reinterviewed again, that
 2 I am -- I don't -- you know, I'm not involved in the case.
 3 Q. Well, during the course of the interview, if
 4 the child says something to you that is patently obvious
 5 that -- that he or she has stated a physical impossibility,
 6 for example, what would you do in reaction to that?
 7 A. Typically, we let the child talk. The way the
 8 MDT and these forensic interviews occur is they are viewed
 9 from a remote location. Usually there is somebody from
 10 DCFS watching the interview. There is somebody from an
 11 attorney's office watching the interview. There's a lead
 12 detective watching the interview. And whoever else needs
 13 to be in the interview.
 14 When I go back -- towards the end of the
 15 interview, we take a break and I go meet with the people,
 16 the forensic interviewer meets with the people watching the
 17 interview.
 18 And the people that watch the interview will
 19 determine stuff that they think may be truthful or a -- a
 20 lie, and then they will instruct me to do follow-up
 21 questions on the physical improbability. Then I would go
 22 back and then ask the questions that they are concerned
 23 about the probability.
 24 Q. Is there ever a time a second forensic
 25 interview would be conducted?

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1 A. Yes.
2 Q. All right. Was there one conducted in this
3 case?
4 A. There was -- I didn't do it. I don't know if
5 another forensic interviewer did.
6 Q. You learned in the interview from A.P. that
7 there had been marijuana smoked at the party?
8 A. I did.
9 Q. And she said she didn't have any?
10 A. She told me that Mazy -- I think her name was
11 Mazy -- was the only one that was smoking marijuana.
12 Q. And she talked to you a little bit about what
13 she had been drinking that night?
14 A. She told me that she -- they -- she had drank
15 Malibu rum, I believe, with orange juice, and that there
16 was one shot of alcohol -- of the alcohol in the Malibu
17 rum.
18 Q. She told you about watching Pretty Little
19 Liars?
20 A. She did.
21 Q. Do you know that show?
22 A. I don't.
23 Q. Really?
24 A. You know what, I tell my co-workers I don't
25 really watch TV. I am a news guy. I think that shows are

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1 don't know about facts or falsities.
2 Q. In your report, you did essentially draw a
3 conclusion about various things about her mindset, right,
4 from how she acted?
5 A. I documented the changes in behavior I saw,
6 yes.
7 Q. And you said that, "Thus, I believed A.P.
8 saying sorry to" -- "said sorry to apologize for putting
9 herself in the situation."
10 That sounds like a conclusion of truth or
11 falsity.
12 A. I believe she was feeling sorry for being
13 sexually assaulted, if that's what occurred.
14 Q. Okay.
15 A. Not for sorry for --
16 Q. But you didn't put it that way. "She said
17 sorry to apologize for putting herself in the situation,"
18 apparently the situation she was discussing with you.
19 A. I think there was that.
20 Q. She advised, did she not, that she was facing
21 away from Kevin Mentaberry and lying on her side throughout
22 the abuse, right?
23 A. That's -- that's correct.
24 Q. Eye contact with you is an important
25 consideration? Eye contact with the forensic interviewer?

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1 dumb unless they have some type of importance to learn
2 something. So I have no idea what Pretty Little Liars is
3 about.
4 Q. Even from the title you don't?
5 A. I -- I guess girls pretty something lying, I
6 guess. I don't know.
7 Q. Is the -- are you required as a forensic
8 investigator to know a little more -- a little bit about
9 the background of the child or how the -- how the child
10 does in school and that kind of thing, or does that -- that
11 comes with the other investigation?
12 A. During the -- during the -- if the Great Basin
13 Children Advocacy Center was doing an interview, they
14 would -- there is a questionnaire that would ask
15 medications, how they are doing in school, this and that.
16 If the Great Basin Children Advocacy Center
17 had done the intake on it, I -- there would be that
18 information as a forensic interviewer I would know before
19 the interview.
20 Q. All right. So taking the interview that you
21 conducted with A.P., you wouldn't have any information
22 about the truth or falsity of any of it, in your opinion?
23 A. As a forensic interviewer?
24 Q. Yeah.
25 A. No, I -- I am there gathering information. I

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1 A. Somebody making eye contact with you, they are
2 generally feeling comfortable.
3 Q. Feeling what?
4 A. Comfortable.
5 Q. And if -- isn't it commonly understood that
6 you're not supposed to look at somebody, stare at somebody
7 because it makes them nervous? There's a period of time
8 for eye contact to continue and then you are supposed to
9 take it away?
10 A. Yeah, we look down during disclosure parts,
11 yes.
12 Q. Even just in everyday life, this eye contact
13 business is kind of complicated, right?
14 A. During forensic interview, it's -- it's a
15 fairly intense moment. So generally, to show a person that
16 you are interested in what they are saying, you do make eye
17 contact to show your interest in what they're saying.
18 If I would look down and not look at them,
19 like I said earlier, it -- I will ask them, if I think my
20 eye contact is making them uncomfortable, especially during
21 the disclosure phase, "Do you want me to look away?" And I
22 will look at the ground.
23 Q. Ms. A.P. told you that she actually physically
24 removed Mr. Mentaberry's hand, right?
25 A. That's correct.

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1 Q. From her vagina area, vaginal area?
 2 A. That's correct.
 3 Q. And she also told him to stop?
 4 A. That's correct. She said that.
 5 Q. And she told you that when she did this is
 6 when, quote, "A.H. woke up"?
 7 A. That's correct.
 8 Q. Did she tell you about subsequent -- did Ms.
 9 A.P. tell you about subsequent -- the conversations -- not
 10 the conversations -- any revelations that she had made
 11 about what happened to her?
 12 A. Could you reask your question.
 13 Q. Well, the -- who did she first tell about it?
 14 A. She -- she told A.H. first, and then she said
 15 a couple days later at school she told A.M. and that A.M.
 16 didn't believe her.
 17 Q. And, again, any -- any investigation beyond
 18 what she said at that time would simply be done by -- by
 19 Detective Morrell?
 20 A. That's correct.
 21 Q. Okay. Well, in this case, I guess the telling
 22 A.H. would have been in part done by Officer Craig. You
 23 were aware that he interviewed A.H.
 24 A. I was not.
 25 Q. Really.

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1 And it just seems to us it's unnecessarily
 2 burdensome.
 3 If the State has something they want to ask if
 4 it's in there, that's fine.
 5 But our view is that the interview is just
 6 redundant.
 7 THE COURT: Any response? Cumulative.
 8 MR. THOMPSON: Cumulative? Basically --
 9 THE COURT: That's what I am hearing.
 10 MR. THOMPSON: That's what it sounds like to me
 11 as well.
 12 I will address it that, as crafty -- or not
 13 crafty -- but as eloquent as Mr. Woodbury can be in asking
 14 her whether or not she said these things to him or not, it
 15 would be best for the jury to hear it from her own words to
 16 describe it.
 17 And I think while I understand Mr. Woodbury's
 18 saying there may be other things in there, we have talked
 19 about how the interview works. And to understand her
 20 answers in context would be important for the jury. It
 21 would be their best evidence to be able to judge her
 22 credibility.
 23 On the other side, to have tons of testimony here
 24 where they are making accusations she's inconsistent, we
 25 are offering it as prior consistent statement. In other

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1 And A.P. told you that she had told A.M. a few
 2 days later but that A.M. did not believe her?
 3 A. That's correct.
 4 Q. And determining whether A.M. believed her or
 5 whether that was -- and if she didn't, why she didn't, that
 6 was left to Corporal Morrell as well?
 7 A. That's correct.
 8 MR. WOODBURY: Thank you. I have nothing
 9 further.
 10 THE COURT: Redirect.
 11 MR. THOMPSON: We would offer Exhibit 14 then.
 12 THE COURT: Any objection for 14 for
 13 identification?
 14 Mr. Woodbury, any objection to that? He is
 15 offering the exhibit.
 16 MR. WOODBURY: Again, the -- Yes, Your Honor.
 17 The -- I don't really care except it's probably
 18 unnecessarily burdensome.
 19 There -- he has been through, from my point of
 20 view, what we want the jury to know about the interview.
 21 Presumably, from the State's point of view, what they want
 22 to know.
 23 And I don't see where -- the interview contains a
 24 wide variety of information about hunting and other things
 25 that the -- that have nothing whatever to do with the case.

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1 case it could even, as they are arguing, inconsistent.
 2 And so this being the lone recorded interview
 3 with her at the earlier stage, I wouldn't say this is
 4 cumulative by any stretch.
 5 THE COURT: Okay. Well, I don't know if it can
 6 come in as a prior consistent statement. That's not how
 7 the Court would permit it.
 8 The objection I am hearing is legally that,
 9 although relevant, the evidence might be excluded because
 10 its probative value is substantially outweighed by
 11 considerations of undue delay, waste of time, needless
 12 presentation of cumulative evidence.
 13 That's what I'm hearing. I haven't heard a
 14 statute cited to me, but that's how I am hearing this
 15 objection
 16 Is there any other argument on this,
 17 Mr. Woodbury?
 18 MR. WOODBURY: I have no other argument.
 19 THE COURT: Court is going to overrule the
 20 objection. Exhibit will be admitted. Jury can consider it
 21 in the jury room.
 22 So Exhibit 14 for identification is admitted.
 23 That is now Exhibit 14.
 24 (WHEREUPON, State's Exhibit 14 was admitted into
 25 evidence)

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1 THE COURT: Redirect?
2 REDIRECT EXAMINATION
3 BY MR. THOMPSON:
4 Q. You mentioned that during the course of one of
5 these interviews, you will go back and discuss with the
6 case agent and these other folks who are watching the
7 interview, and then they have you go back and ask specific
8 questions.
9 Did you do that in this particular case?
10 A. I did.
11 Q. Was there anything in particular they wanted
12 you to touch on?
13 A. There was not.
14 MR. THOMPSON: I didn't have anything else for
15 him.
16 THE COURT: Recross?
17 MR. WOODBURY: No.
18 THE COURT: Any jury questions?
19 All right. Is Detective Marshowsky being held?
20 MR. THOMPSON: I do have one other thing that --
21 I don't know if I'll need him or not.
22 But I wanted to ask the Court to take judicial
23 notice of an item of fact from the preliminary hearing.
24 That A.P. was called only by Mr. Woodbury and
25 only examined by Mr. Woodbury.

1 medium of information, including, without limitation,
2 newspapers, television, radio or the Internet.
3 And do not form or express any opinion on any
4 subject connected with the trial until the cause is finally
5 submitted to you.
6 You may not use any electronic device or media,
7 such as the telephone, a cell phone, smartphone, iPhone,
8 Galaxy, or computer, the internet, any internet service,
9 any text or instant messaging service, any internet chat
10 room, blog, or website such as Facebook, Instagram,
11 LinkedIn, YouTube or Twitter, to communicate to anyone any
12 information about this case until I accept your verdict.
13 In other words, you cannot talk to anyone on the
14 phone, correspond with anyone, or electronically
15 communicate with anyone about this case.
16 In addition, remember, jurors cannot conduct any
17 form of independent research or investigations or
18 experiments prior to during the jury deliberations
19 This means you cannot do research such as
20 consulting dictionaries, using the internet or using
21 reference materials looking into the legal and factual
22 issues in this case.
23 You cannot make any investigations, test theories
24 of the case, recreate aspects of the case or in any other
25 way investigate or try to learn about the case on your own.

1 THE COURT: All right. That's something we can
2 deal with outside the presence of the jury.
3 He is held subject to recall then?
4 MR. THOMPSON: Yes, just like everybody else.
5 THE COURT: All right. Don't discuss the case or
6 your testimony while the trial is going on because the rule
7 of exclusion is invoked, sir.
8 You can discuss it with one of the lawyers or
9 both, but that's it. Until you hear the trial is over,
10 follow the rule of exclusion, please.
11 Any other questions for Detective Marshowsky?
12 Appears no jury questions.
13 All right. Thank you very much. We'll have you
14 step down, sir.
15 THE WITNESS: Thank you.
16 THE COURT: Next witness.
17 MR. THOMPSON: I just want to approach that
18 topic. Otherwise, I don't have any other witnesses.
19 THE COURT: Oh, okay. Well, we are near 10:30.
20 We'll take a quick recess and go from there.
21 Standard direction, ladies and gentlemen.
22 Please do not converse amongst yourselves or with
23 anyone else on any subject connected with the trial. Do
24 not read, watch or listen to any report or commentary on
25 the trial or any person connected with the trial by any

1 Please leave your pads on your chair there.
2 We'll go into recess for the jury.
3 We'll go 10 to 15 minutes.
4 (WHEREUPON, the jury left the courtroom)
5 THE COURT: Please be seated.
6 All right. The jury and alternate have now
7 departed the courtroom.
8 I'm sorry, you want the Court to take judicial
9 notice of what now?
10 MR. THOMPSON: So at the preliminary hearing, the
11 State took advantage of -- I believe it's 171.196, which is
12 that new statute now that allows us to put on the hearsay
13 evidence in order to meet our burden at the preliminary
14 hearing, the State. So we did that.
15 And you will see in the index of the preliminary
16 hearing transcript that we called Mike Marshowsky, Shawna
17 Eklund, A.H. and Josh Morrell. That was it.
18 The defense then called A.P. And she was -- we
19 asked no questions of her whatsoever.
20 So I just wanted the Court to take judicial
21 notice of the fact that she was interviewed at the --
22 because it gives context to the -- because when we asked
23 her about the preliminary hearing transcript and what she
24 said there, I think it gives context to know that he was
25 the only one asking her questions at that time.

1 The State did not call her. We did not ask her
2 any questions. And therefore -- I mean, that's the facts,
3 that's what happened. We didn't ask any questions. He is
4 the one who only asked questions of her at the preliminary
5 hearing.

6 That is what I am asking the Court to take
7 judicial notice of.

8 THE COURT: All right. Mr. Woodbury, your
9 position? You can be heard on that, of course, by statute.

10 MR. WOODBURY: I guess I am missing the point. I
11 have no clue what they are asking that to be taken into
12 notice for.

13 I mean, it could also be the case we would ask
14 you to take judicial notice of the fact that they wouldn't
15 call her. They -- so I --

16 THE COURT: I'm losing it, too, I have to tell
17 you. I don't understand why this is important at all.

18 The point is she testified. Who cares who called
19 her? For this jury, who cares? Why do we care? Why is it
20 relevant?

21 I mean, still, if I'm going to take notice of a
22 certain fact, I think it's got to be relevant.

23 MR. THOMPSON: I understand that. And I guess
24 that's what I am trying to point out is that if you
25 understand when they are asking her about what she

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1 You also have the right to remain silent, sir.

2 Of course I am talking directly to you now.

3 This is pretty much a one-way conversation.

4 I may ask you a couple questions on this issue.

5 Your attorney got up and said in opening
6 statements that you were going to testify. And it's your
7 right to do that; it's your absolute right. It's also your
8 absolute right to remain silent still.

9 And it's for your decision and your decision
10 alone. You can listen to your attorney's advice on this or
11 reject it; it's up to you. But the way the rules work,
12 it's your decision alone.

13 I like to say, even if the president of the
14 United States was in the back of the courtroom, he could
15 not make that decision. I certainly can't make it. Nobody
16 else can make it but you.

17 Okay, Mr. Mentaberry?

18 THE DEFENDANT: Thank you, Your Honor.

19 THE COURT: Do you understand all that?

20 THE DEFENDANT: I do. I have all the faith in
21 Mr. Woodbury.

22 THE COURT: Okay. Well, this is customary for me
23 to ask about these things.

24 You need to understand, if you do testify, you
25 are subject to cross-examination by the prosecuting

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1 testified at the preliminary hearing, it was only on
2 questions by the defense counsel at that juncture.

3 Then you have this other testimony both from Dr.
4 Piasecki yesterday and from Mr. Marshowsky today where
5 every time they tell their story they are being
6 retraumatized.

7 And that basically the State wasn't in the
8 business of doing that at the preliminary hearing where it
9 wasn't necessary to do so. But basically that's their
10 tactic on their part to get yet another statement out of
11 her to create an inconsistency, which we expect to see is
12 what Marshowsky says.

13 And so this was yet another opportunity for them
14 to do that.

15 And so to give context to her testifying yet
16 again at the preliminary hearing, I think that it's
17 something that we should be able to explain to them, that
18 these were only questions from their side.

19 THE COURT: Okay. Anything else on that?

20 MR. WOODBURY: No, Your Honor.

21 THE COURT: I am not taking judicial notice of
22 that. I don't see the relevance of that, I'm sorry.

23 Are you resting your case?

24 MR. THOMPSON: Yes.

25 THE COURT: Okay. You have the right to testify.

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1 attorney.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: I think you have seen how that works
4 in this trial. You have been paying attention pretty
5 closely. I don't stare you down, but I look at you
6 occasionally.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Obviously you have a keen interest in
9 all of this.

10 If you do testify, your testimony becomes part of
11 the evidence in the case and it's subject to fair closing
12 argument -- fair comment in closing argument by both the
13 State and the defense.

14 And I don't think you have a prior felony
15 conviction that I have been made aware of, so I don't think
16 you can be impeached with a prior felony conviction.

17 MR. WOODBURY: He has no prior.

18 THE COURT: Mr. Thompson is shaking his head, so
19 that is not an issue.

20 So that is it. I mean, that becomes part of the
21 body of evidence and the lawyers can comment on it in
22 closing argument.

23 If you remain silent, if you did remain silent,
24 just remember, if you and your attorney ask for an
25 instruction on that, I would instruct the jury that it's

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1 your constitutional right to remain silent and not be
2 compelled to testify.
3 That's the law of the land.
4 The decision as to whether you should testify is
5 left to you, acting on the advice and assistance of your
6 attorney. These are things I will tell the jury.
7 I would tell the jury, "You may not draw any
8 inferences or any conclusions from the fact that Mr.
9 Mentaberry does not testify, nor should this fact be
10 discussed by you or enter into your deliberations in any
11 way."
12 So I am telling the jury, "you can't talk about
13 the fact Mentaberry does not testify," if that was your
14 ultimate choice. It cannot be used against you.
15 THE DEFENDANT: I understand.
16 THE COURT: So you have discussed the pros and
17 cons of testifying with your attorney?
18 THE DEFENDANT: Yes, I have.
19 THE COURT: And you've had time to --
20 THE DEFENDANT: Very little. Not as much as I
21 would like, but communication is good with him.
22 THE COURT: Well, do you need more time to talk
23 to Mr. Woodbury about the pros and cons?
24 THE DEFENDANT: No, Your Honor.
25 THE COURT: I mean, sometimes it's a lot of talk;

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1 MR. WOODBURY: Three.
2 THE COURT: Can I know who they are now for sure?
3 MR. WOODBURY: A.M., Mazy Mentaberry and Kevin.
4 THE COURT: I'm sorry, A.M., Mazy and Kevin?
5 MR. WOODBURY: Yes.
6 THE COURT: Are they ready to go?
7 MR. WOODBURY: Yes.
8 (Recess taken at 10:31 a.m.)
9 (Proceedings resumed at 10:46 a.m.)
10 THE COURT: Let's go back on the record for Case
11 CR-FP-18-5030, State versus Mentaberry.
12 We have Elko County Deputy District Attorney Chad
13 Thompson back to represent the State.
14 Mr. Mentaberry is back in court with counsel Gary
15 Woodbury.
16 And will counsel stipulate to the full presence
17 of the jury and the alternate?
18 MR. THOMPSON: Yes.
19 MR. WOODBURY: So stipulated.
20 THE COURT: All right. Any other evidence to
21 present, Mr. Thompson?
22 MR. THOMPSON: No. The State rests.
23 THE COURT: All right. The State having rested
24 its case in chief, does the defense have a case today?
25 MR. WOODBURY: We do.

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1 sometimes it's maybe just a little talk.
2 But the point is, do you feel comfortable with
3 the decision you have made on this issue?
4 THE DEFENDANT: Yes, I do.
5 THE COURT: Testifying or not, right?
6 THE DEFENDANT: Absolutely.
7 THE COURT: Okay. Do you need -- you're telling
8 me you don't need more time to talk to Mr. Woodbury about
9 it and you are comfortable with your decision?
10 THE DEFENDANT: Yes, I am.
11 THE COURT: Your case is coming up. This is when
12 you got to ultimately take the stand or remain silent.
13 Do you understand?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: Okay. All right. It looks like
16 you're lucid and understanding everything today.
17 You already said you are satisfied with the legal
18 counsel that you have got in this case.
19 THE DEFENDANT: (Nods head).
20 THE COURT: Is that correct?
21 THE DEFENDANT: Yes, sir.
22 THE COURT: Very good. Anything else?
23 MR. WOODBURY: No.
24 THE COURT: All right. How many witnesses, do
25 you think?

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1 THE COURT: All right. Mr. Woodbury, first
2 witness.
3 MR. WOODBURY: A.M., please.
4 THE COURT: All right. Please come on up here.
5 This door comes out to you. Please raise your right hand
6 and be sworn.
7 (WHEREUPON, the witness was sworn)
8 THE COURT: Please have a seat at the witness
9 stand. The door comes out to you. Watch your step.
10 Just taking the oath there, it seems you're a
11 little soft-spoken. So why don't you take this microphone
12 and put it down on that table right in front of you. Could
13 you do that for me?
14 Thank you very much.
15 Try to keep your voice up.
16 And I assume we don't have any other witnesses in
17 the courtroom at this time, so -- because some other people
18 came in.
19 THE BAILIFF: I spoke to them, Judge. They are
20 not witness.
21 THE COURT: Okay. No other witnesses.
22 Mr. Woodbury, please proceed.
23 A.M.
24 called as a witness in said case, having been first
25 duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. WOODBURY:

Q. Would you state your name, please, for the record.
A. A.M.
Q. And A.M. is (name spelled)?
A. Yes.
Q. All right. How old are you, please?
A. I am 17.
Q. Okay. What is your date of birth?
A. 10-28-02.
Q. You are going to have to talk a little louder.
A. Okay, sorry.
THE COURT: The other thing, you can take this mic and hold it just like right there. It might help, too.
Q. Do you know this fellow sitting to my immediate left?
A. Yes.
Q. Who is he?
A. My dad.
Q. And what's his name?
A. Kevin Mentaberry.
Q. All right. Are you in school?
A. Yeah.
Q. And what year in school are you?

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Q. Okay. And how much older than you is Mazy?
A. About like three years, three and a half years.
Q. Okay. Did you know a girl named A.P.?
A. Yes.
Q. How did you know her?
A. She was my friend.
Q. And when did you meet her?
A. Fifth grade.
Q. Okay. And she was your friend in fifth grade?
A. Yeah.
Q. And how long did she remain your friend?
A. We stopped being friends in seventh grade and then became friends again in ninth.
Q. You are aware that this trial is about the events of December 31, 2017?
A. Yes.
Q. Do you remember that day at all?
A. I remember most of it.
Q. Okay. Did you make arrangements or -- or talk to your dad about having some folks over for New Year's?
A. Yes.
Q. Can you describe what that conversation was about?
A. I pretty much just asked if I could have a

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A. I am a junior -- sorry. I am a junior.
Sorry, I don't mean to cry.
Q. What's the matter?
A. I don't know. Just being up here is a little scary.
Q. Okay. And where do you live at, A.M.
THE COURT: The jury can't hear her. She is going to have to mic out. Put that right there and talk into it. Keep your voice up, please. Thank you.
A. Like the address?
Q. That would be all right.
A. 162 Barite, Elko, Nevada.
Q. And who lives there with you?
A. Me, my dad, and my brother.
Q. Okay. And do you have a sister as well?
A. Um-hmm.
Q. What's her name?
A. Mazy Mentaberry.
Q. Okay. Rather than do "uh-huh," you are going to have to answer "yes" because the court reporter --
A. Yes. Sorry.
Q. And Mazy does not live with you any longer?
A. No.
Q. All right. Did she back in December of 2017?
A. Yes.

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couple of friends over since it was New Year's. We were all just going to hang out.
Q. Okay. I'm going to have to ask you to speak up again.
A. I just asked him if I could hang out, if my friends could come over.
Q. Okay. Can you describe what "hanging out" means in your mind?
A. Just being with friends.
Q. And who all did you invite?
A. I invited A.T., J.S., A.H. And we previously asked A.P. to come over, but she said that she already had plans. But I guess her -- like her plans didn't work out, so she asked to come over again. So she came over.
Q. How did that happen that she asked to come over again? Was that by a telephone call, or was it --
A. It was just by text.
Q. Oh, okay. And a lot of the communication you have is by text message?
A. Yes.
Q. Okay. Were you made aware -- this is just a yes or no question. Were you made aware of what A.P.'s other arrangements were that fell through?
A. I think she said that she was going to a party.

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1 MR. THOMPSON: I'm going to object, Judge. He
2 said a yes or no question.
3 Q. Yeah, it's just --
4 A. Oh, yeah, sorry.
5 Q. Then --
6 THE COURT: So the answer will remain in the
7 record,
8 And next question, please.
9 Q. So when did the hanging out start?
10 A. I think A.H. and A.T. came over about 6:00.
11 Q. Okay. Who was -- what is A.T.'s last name?
12 A. (Name stated).
13 Q. Did A.T. move away?
14 A. She did.
15 Q. Okay. Where did she go?
16 A. To Phoenix.
17 Q. You were a freshman in school at that time?
18 A. Yes.
19 Q. And was J.S. there?
20 A. Yes.
21 Q. Can you tell the jury J.S.'s last name?
22 A. (Name stated).
23 Q. All right. And is -- are you and -- were you
24 and J.S. involved with each other at that time?
25 A. Yes.

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1 Q. Do you know when Nate got there?
2 A. I -- I don't remember.
3 Q. Okay. All right. And was there alcohol
4 downstairs?
5 A. Yes.
6 Q. Okay. Where did that come from?
7 A. I saw a bottle on the kitchen table upstairs,
8 and I decided to take it without anyone knowing.
9 Q. Okay. Was it a new bottle?
10 A. Yes.
11 Q. And about when was that?
12 A. Probably around 7:00, after my friends came.
13 Q. And where was your dad at that time?
14 A. I -- I don't know. Maybe he was outside. I
15 am not entirely sure --
16 THE COURT: I'm sorry. We got road traffic here,
17 we have a heating system that's loud, and it's an old
18 courthouse, it's like a hundred years old, and so, yeah, we
19 are just really going to have to have you try to speak up,
20 okay.
21 I know it's probably a new experience for you.
22 But please do your best for that. Thank you.
23 Mr. Woodbury.
24 Q. And what did you do with the bottle of
25 alcohol?

102

1 Q. And still involved?
2 A. Yes.
3 Q. Okay. What time did J.S. get there?
4 A. I think he got there around 6:00, too.
5 Q. Oh, okay.
6 A. Same time.
7 Q. All right. When did A.P. text you?
8 A. Probably around 7:00.
9 Q. Did -- did A.P. have other friends at high
10 school?
11 A. Not very much, I don't think.
12 Q. So it was just you four, you and A.T. and --
13 A. Yeah, I -- I think she had like a couple --
14 couple of like small friends that she rarely hung out with,
15 but we were kind of just like her friend group, I guess you
16 could say.
17 Q. Okay. Was there any alcohol at the party?
18 A. Yes.
19 Q. And what -- let me ask you first, did your
20 father have a friend over as well?
21 A. Yes.
22 Q. And who was that, if you know?
23 A. Nate.
24 Q. Okay. And do you know when Nate got there?
25 A. Huh?

101

1 A. What did I do with it?
2 Q. Yeah.
3 A. Me and my friends drank it.
4 Q. All right. You took it down to the basement?
5 A. Yes.
6 Q. Okay. And that's -- your house is a -- there
7 is a main floor and then you go downstairs and there is a
8 basement?
9 A. Yes.
10 Q. All right. Can you describe the stairs down?
11 A. There is the kitchen, and then there is like a
12 set of stairs and it just like goes down.
13 Q. Is it pretty steep stairs?
14 A. Yeah.
15 Q. And there is no handrails?
16 A. No.
17 Q. And when -- do you know what time A.P. got
18 there?
19 A. I think she got there around 7:30, 7:30, 8:00.
20 Q. And would it be fair to say that you are not a
21 hundred percent sure?
22 A. No.
23 Q. And then when A.P. and you had communicated by
24 text message, when she wanted to come over to the party,
25 was part of those messages that she should bring alcohol?

103

1 A. Yeah. She discussed that her mom could get
2 her a bottle of alcohol and bring it over.
3 Q. And you approved of that?
4 A. Yes, I did.
5 Q. All right. And did anybody else -- was
6 anybody else on the text messaging process between you
7 and --
8 A. It was a group chat between me, A.T., A.H. and
9 A.P. And we were all messaging in it.
10 Q. Then had you consumed any alcohol by the time
11 that -- before A.P. got there?
12 A. I don't remember.
13 Q. All right. And was there marijuana there as
14 well?
15 A. There was.
16 Q. And whose marijuana was that?
17 A. Mazy's.
18 Q. And do you know why she had marijuana?
19 A. No.
20 Q. And Mazy had a friend there as well?
21 A. She did.
22 Q. What was her name?
23 A. Cassidy.
24 Q. All right. And did you know Cassidy?
25 A. Yes.

104

1 Q. And Mazy's room is a pretty small room?
2 A. It was a decent size room, could fit enough
3 people in there, all of us.
4 Q. And how much alcohol do you think you had
5 after A.P. got there?
6 A. Probably about two shots.
7 Q. Two shots?
8 A. (Nods head.)
9 Q. And did you notice -- pay attention to how
10 much the rest of them had?
11 A. What?
12 Q. Did you pay attention to how much -- how much
13 alcohol the other folks had?
14 A. I -- I don't know. I think we had the same.
15 I don't -- I don't know.
16 Q. Okay. Did there come a time -- come a time
17 when your dad came downstairs?
18 A. Yes.
19 Q. All right. And did that have anything to do
20 with the disposition of the vodka?
21 A. Yes.
22 Q. What?
23 A. He came downstairs and saw that we were all
24 drinking, and him and his friend took the bottle and went
25 upstairs.

106

1 Q. So when A.P. got there, what were you doing
2 during the hanging out?
3 A. We were just downstairs in my sister's room,
4 and I am pretty sure that we were watching something on her
5 TV.
6 Q. In your sister's room?
7 A. Yes.
8 Q. And did the consumption of alcohol begin at
9 that time?
10 A. I think so.
11 Q. And did -- did it include A.P. drinking?
12 A. Yes.
13 Q. And that would be the vodka?
14 A. Yes, and --
15 Q. And do you know -- did you see when she
16 arrived -- well, first of all, when she arrived, did you go
17 upstairs to get her?
18 A. I -- I don't remember. I can't recall if she
19 walked in or if someone opened the door for her. I don't
20 remember.
21 Q. And so you would not know if your dad was
22 asleep on the couch at that time or not?
23 A. I don't think so. I can't --
24 Q. I'm sorry?
25 A. I don't know.

105

1 Q. Were you advised that you were not to be
2 drinking?
3 A. Yes.
4 Q. Did your dad's friend stay, or do you know
5 when -- if he -- when he left?
6 A. I'm not sure. I pretty much just stayed
7 downstairs the whole night, and I don't remember when he
8 left or not.
9 Q. And how about the marijuana? How much of
10 that, if any, did you consume?
11 A. Probably just one hit of it.
12 Q. One hit?
13 A. One puff of it.
14 Q. Okay. All right. And that was -- it was
15 being smoked in a bong?
16 A. Yes.
17 Q. And being passed around?
18 A. Yes.
19 Q. And did you -- how long -- you were all seated
20 on the floor except Mazy?
21 A. Mazy and Cassidy were sitting on her bed. We
22 were kind of just sitting around in her room.
23 Q. All right. Did Mazy have some physical
24 problems?
25 A. Yeah.

107

1 Q. What were they?
2 A. She had a knee surgery right around that time.
3 Q. Were there plans -- first of all, I guess,
4 where was J.S.
5 A. He didn't want to drink or smoke. So Mazy's
6 room did not have a door, and he was sitting in my room
7 because there is Mazy's room, a little hallway, and my
8 room. He was kind of like sitting in there in between.
9 Q. Do you know what he was doing in there?
10 A. Probably just on his phone.
11 Q. All right. And that is -- that is part of
12 your group, is to spend quite a bit of time on the phone?
13 A. Yeah.
14 Q. How long do you think you stayed in Mazy's
15 room, roughly?
16 A. Probably until like 11:30, 12:00, like right
17 around when the ball dropped.
18 Q. Were you -- were you playing games?
19 A. Yes.
20 Q. What kind of games?
21 A. Card games, like Cards Against Humanity and --
22 yeah, that's pretty much it.
23 Q. And around 11:30 or so, what happened?
24 A. We -- I don't know. I think we were pretty
25 much just walking around downstairs, just talking to each

108

1 A. Yeah, freshman year we started being friends
2 again.
3 Q. Okay. And how did -- do you remember how that
4 decision was reached?
5 A. I just knew that she didn't have much friends,
6 and I felt bad, so we started being friends again.
7 Q. And did you know if there was a reason why she
8 didn't have much friends?
9 A. Probably because of her actions. She tends to
10 do a lot of stuff for attention and is somehow always
11 involved in drama.
12 Q. What do you mean by --
13 MR. THOMPSON: I'm going to object to the nature
14 of this character evidence, Your Honor. This is
15 inadmissible character evidence, extrinsic evidence.
16 MR. WOODBURY: That's fine.
17 THE COURT: Okay. So what are you seeking? Are
18 you seeking to strike that last answer --
19 MR. THOMPSON: That that be stricken.
20 THE COURT: Part of it? What?
21 MR. THOMPSON: I am asking it be stricken, yes.
22 THE COURT: Any objection to that?
23 MR. WOODBURY: No, that's fine.
24 THE COURT: The last answer will be stricken.
25 The jury will disregard the last answer.

110

1 other and -- we were just walking around, just talking to
2 each other downstairs.
3 Q. And was anybody sitting on the couch?
4 A. Not that I can recall of.
5 Q. All right. What happened when New Year's
6 came?
7 A. J.S. went home, and then A.P. and A.H. went to
8 go sit on the couch because I asked them if they
9 wanted to -- if they wanted to go to bed in my room, and
10 they said that they just wanted to stay up for a little
11 longer, so I went in my room.
12 Q. What did you do when you got to your room?
13 A. Just went to bed.
14 Q. Were you intoxicated?
15 A. Not heavily, just buzzed, I guess.
16 Q. And how about, you take any notice of whether
17 A.H. was buzzed or --
18 A. She probably was buzzed. She wasn't drunk.
19 Q. Huh?
20 A. She wasn't drunk. She was probably just --
21 Q. And A.P.
22 A. Yeah, probably the same amount.
23 Q. You had restarted -- well, I don't know that
24 you had. The friendship with A.P. had restarted in August
25 or September of 2017?

109

1 Next question, please.
2 Q. In any event, you felt sorry for her?
3 A. Yeah.
4 Q. When you went in -- when did you go into your
5 room to go to bed?
6 A. Probably 12:15, 12:30, somewhere around there.
7 Q. Would you typically lock your door?
8 A. Yeah.
9 Q. How come?
10 A. Sometimes I change in there, and I don't want
11 anyone walking in there. Or my brother tends to annoy me,
12 so I lock the door.
13 Q. Ah. All right. Was Z.W. around at all in the
14 basement?
15 A. He was downstairs for a little bit while we
16 were playing a game, and then I think he went upstairs.
17 Q. Okay. Was that the last time you saw your
18 dad, when he came down and took the vodka and took it
19 upstairs?
20 A. Yeah.
21 Q. Okay. So you didn't see him again until the
22 next morning?
23 A. Yeah. Well, yeah.
24 Q. Then what was the next -- I take it you laid
25 down and went to sleep?

111

290

1 A. Yeah.
 2 Q. All right. And did you ultimately wake up?
 3 A. I woke -- I think I woke up around like 2:00
 4 in the morning to A.P. and A.H. wanting to go in my room
 5 and go to bed.
 6 Q. All right. And you had to get up and unlock
 7 the door?
 8 A. Yeah.
 9 Q. Then did you lock it again?
 10 A. Yeah.
 11 Q. Okay. And then what did you do?
 12 A. Went back to sleep.
 13 Q. Did you ever hear any banging on your door?
 14 A. No.
 15 Q. And have you had an opportunity to think about
 16 that quite a lot?
 17 A. I don't know. If I heard banging, I'm pretty
 18 sure I would have woke up.
 19 Q. I'm sorry?
 20 A. If I heard banging, I'm pretty sure I would
 21 have woken up.
 22 Q. There's no reason to believe that you wouldn't
 23 have woken up?
 24 A. No.
 25 Q. What is the next thing you remember about the

112

1 Q. Oh, okay. And you were the first one to get
 2 out of the truck?
 3 A. Yes.
 4 Q. Okay. And did somebody get out with you?
 5 A. No.
 6 Q. All right. Where -- do you remember where you
 7 were seated in the truck?
 8 A. I -- I don't.
 9 Q. Do you remember where A.P. was seated?
 10 A. I'm pretty sure we were sitting in the back.
 11 My sister always gets shotgun, so...
 12 Q. All right. That was -- when was the next time
 13 that you communicated with A.P.
 14 A. We didn't really talk much after that, and
 15 then --
 16 Q. I'm sorry?
 17 A. We didn't talk much after that.
 18 Q. Talk much?
 19 A. Yeah.
 20 Q. Did you talk some?
 21 A. I don't recall any conversations we had
 22 between there, except the first day we got back from
 23 school.
 24 Q. All right. Do you remember when that was?
 25 A. I don't remember the exact date.

114

1 morning time? What -- do you remember what time you woke
 2 up?
 3 A. I don't remember what time I woke up, but I
 4 just remember us all waking up and people had to go home,
 5 so we all got in the truck.
 6 Q. And you don't have a clue what time, though?
 7 A. Hm-mm.
 8 THE COURT: I'm sorry, what was the answer?
 9 A. No.
 10 THE COURT: Oh, okay. Thank you.
 11 Mr. Woodbury.
 12 Q. Got in what truck?
 13 A. My dad's truck.
 14 Q. Okay. Was he up?
 15 A. Yeah.
 16 Q. Okay. And then when he got in the truck,
 17 where did you go?
 18 A. I can't -- I think A.H.'s mom first picked her
 19 up before we left. And then me, A.P., Cassidy and Mazy got
 20 in the truck, and my dad. And he went to my house, my
 21 mom's house, to drop me off, and then -- yeah.
 22 Q. Where is your mom's house?
 23 A. It was on Elm Street.
 24 Q. It's on what?
 25 A. Elm Street.

113

1 Q. I'm sorry?
 2 A. I don't remember the exact date.
 3 Q. No, but was it Monday after New Year's?
 4 A. I -- yeah.
 5 Q. All right.
 6 A. That would have been the first day back to
 7 school.
 8 Q. All right. So if New Year's was the 1st and
 9 it was on a Monday, then the 8th would have been the first
 10 day back to school?
 11 A. Yeah.
 12 Q. Okay. Did you see A.P?
 13 A. Yeah. We -- it was the very beginning of the
 14 morning.
 15 Q. Where -- where did you meet up with her?
 16 A. We were in one of the buildings at the high
 17 school. And everyone was in there because it was cold
 18 outside and no one wanted to have to wait outside in the
 19 cold. So I was just standing in a group with me, J.S.,
 20 A.T. and A.P.
 21 Q. You are standing in a group with who?
 22 A. J.S., A.T., me, and A.P.
 23 Q. Okay. And were any -- was anybody else
 24 around?
 25 A. There were people close by standing.

115

1 Q. And did A.P. enlighten you about some events
2 that she was claiming happened?
3 A. Yes.
4 Q. What did she tell you?
5 A. She said that she thought my dad had tried to
6 touch her.
7 Q. Had tried to what?
8 A. To touch her.
9 Q. And did she describe the touching?
10 A. No.
11 Q. And what was your response?
12 A. I denied it.
13 Q. I'm sorry?
14 A. I denied it. I was -- I have had multiple
15 friends, like, come over throughout the years and nothing
16 like that has happened. And it was embarrassing because,
17 like, there was people so close by. It was humiliating.
18 Q. I'm sorry. There were people close by?
19 A. Yes.
20 Q. And did A.P. say that her -- your dad had
21 touched her in a voice loud enough that --
22 A. She said that she thought --
23 Q. I'm sorry?
24 A. She said she thought he tried to touch her.
25 Q. She said he thought -- she thought he did?

116

1 A. Yes.
2 Q. Okay. And did -- were people able to hear
3 that, other than the three or four of you?
4 A. Probably.
5 Q. Okay. And what did you say to A.P.
6 A. I said, "No, my dad would never do anything
7 like that."
8 Q. Um-hmm. And did you ever have a conversation
9 with A.P. after that?
10 A. I remember we were in art. I -- I don't
11 remember the exact conversation, but I was like, "I'm sorry
12 if my" -- like "I don't think my dad would ever do that.
13 Like, I'm sorry if you felt that vibe or whatever. But my
14 dad isn't like that." And she said that "it's okay" and
15 that she understands that he was drinking.
16 Q. And was the -- did the friendship end then?
17 A. The friendship ended when -- after she told me
18 that "it's okay" and that she understands, A.T. had told me
19 that she went to the school counselor about it, and A.P.
20 told A.T. to swear not to tell me. And so --
21 MR. THOMPSON: I'm going to object to the
22 hearsay.
23 MR. WOODBURY: Okay. That's fine.
24 THE COURT: All right. Move to strike the last
25 answer?

117

1 MR. THOMPSON: Yes.
2 THE COURT: It will be stricken. Last answer is
3 stricken. Jury will not consider it.
4 All right. Mr. Woodbury.
5 Q. You were under the impression in your mind
6 that A.P. had started telling other people about it?
7 A. Yes. The first day when she told me about how
8 she thought he tried to touch her, after I denied it, she
9 started making a scene and crying. And she ran over to,
10 like, these group of girls, and I don't know if she told
11 them, but I bet they wondered why she was crying.
12 MR. THOMPSON: Objection, speculation.
13 MR. WOODBURY: I think it's her own state of
14 mind. Not speculation about what the other girls were
15 feeling, it's what she thought they might be feeling.
16 THE COURT: It's overruled.
17 MR. WOODBURY: I have nothing further.
18 THE COURT: Cross-examination?
19 CROSS-EXAMINATION
20 BY MR. THOMPSON:
21 Q. So at the -- the party, do you recall the
22 order of everybody -- I guess the hang-out. Do you call it
23 a party or hang-out? Which one?
24 A. Either/or.
25 Q. Okay. Do you remember the order of everybody

118

1 showing up?
2 A. No, I -- I just know that A.H. and A.T. got
3 there around the same time.
4 Q. Okay. Did A.T. have anybody with her?
5 A. She had her sister.
6 Q. She is -- she is just a year younger than you
7 guys?
8 A. Yeah.
9 Q. So A.H., A.T., and her younger sister. And
10 then J.S. showed up later or the same time?
11 A. I think he showed up around the same time.
12 Q. And what about Cassidy?
13 A. I think she previously spent the night and she
14 just stayed over.
15 Q. Oh. And I assume Mazy was there as well?
16 A. Yes.
17 Q. When you got there, you didn't already have
18 the alcohol out -- or when these people all got there, you
19 didn't have the alcohol already out?
20 A. I don't recall.
21 Q. Could you have had the alcohol already out?
22 A. Possibly.
23 Q. And we're talking about vodka at this
24 juncture?
25 A. Yes.

119

1 Q. So is it possible you guys started drinking at
2 6:00 before A.P. got there?
3 A. It's possible.
4 Q. Okay. Did you do any marijuana smoking at
5 that juncture?
6 A. I don't -- I don't think I did.
7 Q. I'm sorry, I should ask that better.
8 Of the group, was it already lit up or
9 whatever it was you were using?
10 A. Maybe my sister had already smoked previously,
11 but I don't recall that I did.
12 Q. Okay. And what were you guys using to smoke
13 the marijuana?
14 A. A bong.
15 Q. Do you know how much marijuana was in the
16 bong?
17 A. No.
18 Q. Do you know where it came from?
19 A. I just know my sister had it.
20 Q. Okay. Do you know what kind of container it
21 was in or anything?
22 A. No.
23 Q. Okay. You didn't see the bong getting
24 prepared then, I take it?
25 A. I don't remember.

120

1 Q. Okay. So if she left at 8:30, then a little
2 before sounds about right then that she --
3 A. Yeah.
4 Q. -- showed up at 8:00?
5 A. Yeah, yes.
6 Q. So you guys had been there for at least a
7 couple hours before A.P. showed up?
8 A. Yes.
9 Q. Were you drinking before then?
10 A. I don't remember.
11 Q. Okay. When A.P. showed up then, did you drink
12 at that time?
13 A. Yes.
14 Q. What about marijuana at that juncture?
15 A. I believe we were all smoking, besides J.S.
16 Q. J.S. is the only one who did not?
17 A. Yeah, and A.H. -- or, sorry, A.T. and her
18 sister.
19 Q. But they were only there for a half hour once
20 A.P. showed up?
21 A. Yeah.
22 Q. So I guess I should straighten that out.
23 And so did you guys start smoking marijuana as
24 soon as A.P. showed up?
25 A. My sister and her friend probably smoked

121

1 Q. And then you guys -- you said Mr. Mentaberry
2 came down and took the vodka?
3 A. Yes.
4 Q. You have to answer out loud. I know it's
5 hard.
6 Do you have a memory of whether or not A.P.
7 was there at that time yet?
8 A. I believe she was.
9 Q. Well, "I believe" --
10 A. Well, yeah.
11 Q. Do you have a specific memory of A.P. being
12 there when he came down and took the vodka?
13 A. I am pretty -- he came down at like 10:00, I
14 think, or I -- I just don't remember.
15 Q. It could be as late as 10:00 when he came down
16 and got the vodka?
17 A. I don't remember.
18 Q. When A.P. -- so did A.T. or her sister partake
19 of any of this?
20 A. No, because A.T. had to leave at 8:30, so they
21 didn't partake in anything.
22 Q. Okay. Is it possible that A.P. showed up just
23 a half hour before A.T. did leave?
24 A. I remember that A.P. came a little before they
25 had to go.

122

1 before, but I don't recall myself smoking before A.P. got
2 there.
3 Q. Okay. Do you have a memory of A.T. still
4 being there when you started smoking?
5 A. I think so. I -- I just don't remember,
6 honestly.
7 Q. Okay. Then you said you were playing games,
8 right?
9 A. Yes.
10 Q. Everybody -- just a normal hang-out, having a
11 good time?
12 A. Yeah.
13 Q. No issues with anybody?
14 A. No.
15 Q. And that went on for quite a while then?
16 A. Yeah, a couple hours, I guess. We were all
17 just hanging out as friends.
18 Q. Like friends do, right?
19 A. Yeah.
20 Q. And so you are hanging out, playing, smoking,
21 and drinking occasionally?
22 A. Yes.
23 Q. All the way up until the midnight hour?
24 A. I -- I think I stopped drinking like before
25 12:00. I -- I had two shots in between 6:00 and 12:00,

123

1 50...
2 Q. Okay. And you are sure it was just two shots?
3 A. Positive.
4 Q. And as far as your use of marijuana, are you
5 sure it was just a puff or two puffs or what?
6 A. Yeah, probably around that. I -- yeah.
7 Q. Okay. Were you guys eating anything? Did you
8 have any food?
9 A. I don't remember. I remember my dad cooked,
10 but he burned it, so...
11 Q. So maybe you didn't eat anything?
12 A. I don't remember.
13 Q. Do you remember what it was he was cooking?
14 A. Something on the barbecue. I don't really
15 know.
16 Q. You didn't get to see the remnants of it
17 afterwards?
18 A. The burnt remnants? No.
19 Q. So you didn't eat what was on the barbecue?
20 A. I don't think so.
21 Q. Prior to your friends showing up, was your dad
22 and his friend there?
23 A. Yes, but I don't remember how early his friend
24 came over. I remember they were just upstairs just
25 talking.

124

1 came down?
2 A. Probably five minutes, ten minutes.
3 Q. This marijuana bong, when you use it, does it
4 create a lot of smoke?
5 A. Yes.
6 Q. Does it create a specific odor?
7 A. Marijuana odor.
8 Q. Okay. Pretty --
9 A. Yeah.
10 Q. -- pungent? Pretty strong?
11 A. Yes.
12 Q. And Mazy doesn't have a door on her room?
13 A. No.
14 Q. Why not? Or how --
15 A. I don't remember.
16 Q. Okay. So was there anything keeping the smoke
17 contained just inside of her room, or is it going
18 throughout the basement?
19 A. Just going around.
20 Q. Okay. You could smell it everywhere?
21 A. Just around our rooms.
22 Q. Okay. And you said your dad came down around
23 10:00 to take the vodka?
24 A. I -- I don't recall.
25 MR. WOODBURY: Your Honor, this is the third time

126

1 Q. Were they drinking?
2 A. Yeah, they had Bud Light.
3 Q. Okay. Do you happen to have any idea of how
4 much they drank?
5 A. No.
6 Q. In your conversation with A.P., you mentioned
7 something about him being intoxicated. Was he intoxicated
8 that night?
9 A. We were all intoxicated.
10 Q. Everybody was intoxicated?
11 A. (Nods head).
12 Q. Is that a "yes"?
13 A. Yes.
14 Q. Sorry.
15 A. It's okay.
16 Q. To include your -- your dad's friend, this --
17 I can't remember his name now. It's --
18 A. Nate.
19 Q. Nate. Was he intoxicated as well?
20 A. Yes.
21 Q. Okay. Did he come down with you guys down
22 there?
23 A. He came down when my dad did to take the
24 vodka.
25 Q. Okay. How long was your dad there when he

125

1 he has asked it. We object. It's redundant.
2 MR. THOMPSON: That's fine. I will withdraw it.
3 THE COURT: All right. Next question.
4 Q. How long was he downstairs when he got it?
5 A. Five to ten minutes. I don't know. Not
6 positive. I wasn't watching his every move.
7 Q. Okay.
8 THE COURT: Try to keep that voice up, you're
9 trailing a little bit.
10 A. Sorry.
11 Q. It was fairly short, though?
12 A. Yes.
13 Q. Was there any sort of lecture involved with
14 it?
15 A. I don't recall.
16 Q. Just --
17 A. I just remember him seeing the vodka and
18 taking it.
19 Q. Okay. And you had gotten that off of the
20 kitchen table?
21 A. Yeah.
22 Q. Was it in a bag or something?
23 A. It was just right there, just decided to take
24 it.
25 Q. When he came and got it, how much was left in

127

1 it, if you know?
 2 A. I don't recall. I mean --
 3 Q. Half, quarter, three quarters? Any memory at
 4 all on it?
 5 A. I don't -- I don't know.
 6 Q. But you had all had about the same amount from
 7 it?
 8 A. Yes.
 9 Q. Were you mixing it with anything?
 10 A. We probably had something to chase it with.
 11 Q. So you are playing games, hanging out, and
 12 then the New Year's comes. Did you guys watch the ball
 13 drop or anything?
 14 A. I don't -- I don't remember. I just remember
 15 us all hanging out and -- I don't know. I feel like none
 16 of us really kept track of the time, so it was kind of just
 17 New Year's.
 18 Q. Okay. It just happened --
 19 A. Yeah,
 20 Q. -- and then?
 21 A. Nothing.
 22 Q. The party's over?
 23 A. Yeah. It wasn't very exciting.
 24 Q. And J.S. left really soon right after
 25 midnight?

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1 talking about this evening. Like when she came over, do
 2 you have a memory of your dad being passed out anywhere or
 3 sleeping?
 4 A. I don't remember telling her, "oh, he's
 5 drunk." We never had a conversation about that. We just
 6 hung out.
 7 Q. Okay. While you were there at the house?
 8 A. Yes.
 9 Q. Okay. So the only memory of telling her that
 10 he was intoxicated was at the school incident --
 11 A. Yes.
 12 Q. -- when she confronted you?
 13 A. Yes.
 14 Q. Okay. Now, did you ever go in the room and
 15 hang out with J.S. while he was in there?
 16 A. Yeah, I mean, we both kind of just switched
 17 back and forth. And when we started to play games, J.S.
 18 was in there. He just didn't want to be around the smoke
 19 or anything.
 20 Q. Okay. So was there a fair amount of moving
 21 around with you guys in and out of rooms and --
 22 A. Mazy and Cassidy pretty much just stayed in
 23 the room, and it was pretty much just me and J.S.
 24 Q. You guys have a dog?
 25 A. We did.

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1 A. Yeah, he had to be home a couple minutes after
 2 it struck 12:00.
 3 Q. And he doesn't live far away, I presume, then?
 4 A. He lives up the street.
 5 Q. And even when midnight turned, was Mazy and
 6 Cassidy still back in their room?
 7 A. Yes.
 8 Q. From Mazy's and Cassidy's room, can you see
 9 out into the family room area, I guess, of the basement?
 10 A. No. There is -- like the door is right here,
 11 then there is a little hallway -- not even a hallway, just
 12 a little space, and then like the whole living room is
 13 right there. You have to be standing by the doorway to see
 14 into the living room.
 15 Q. And so when you guys were in the room or where
 16 you were sitting or whatever, you couldn't see out into the
 17 family room?
 18 A. No.
 19 Q. Okay. Which would make it a little easier to
 20 hide if you're smoking marijuana or drinking back there?
 21 A. Yes.
 22 Q. Did you ever tell -- do you remember telling
 23 A.P. that your dad was drunk at some point?
 24 A. Yes.
 25 Q. I'm sorry, that was really poorly asked. I am

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1 Q. You did back then?
 2 A. Yes.
 3 Q. We're -- we're talking about December 31 --
 4 A. Yes.
 5 Q. -- of 2017 you had a dog.
 6 What kind of a dog was it?
 7 A. She was like a black lab.
 8 Q. And her name?
 9 A. Raven.
 10 Q. So when you went to bed, you said A.H. and
 11 A.P. were -- were they on the couch at that juncture? Your
 12 last memory of where they were is what I want to go to.
 13 A. They were just sitting on the couch, and I
 14 think they were playing video games.
 15 Q. Do you remember the video game?
 16 A. Skyrim.
 17 Q. Skyrim?
 18 A. Yeah.
 19 Q. Okay. Do you remember where they were at on
 20 the couch?
 21 A. I don't -- I think A.P. was like sitting on
 22 the edge of the couch, and A.H. was probably somewhere on
 23 that side too.
 24 Q. I guess I am wondering how close they were to
 25 one another.

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1 A. I don't know, not too close.
2 Q. Okay. So your dad only came down the one time
3 that you can recall?
4 A. That I can recall.
5 MR. THOMPSON: I don't have anything else.
6 THE COURT: Redirect?
7 MR. WOODBURY: Nothing.
8 THE COURT: Jury questions?
9 All right. Is A.M. being held for now subject to
10 recall?
11 MR. WOODBURY: That would be fine.
12 THE COURT: Okay. What that means is you are
13 still a witness in this case so you'll have to have a seat
14 outside the courtroom.
15 Remember the rule of exclusion is invoked. So
16 what that means is don't discuss this case or your
17 testimony with anybody while the trial is going on. You
18 will hear, I'm sure, from one of the lawyers when the trial
19 is over, okay.
20 So keep that mind. You can discuss it with one of
21 the attorneys, but that's it.
22 Okay?
23 THE WITNESS: Okay.
24 THE COURT: Thank you.
25 And any jury questions?

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1 A. M-a-z-y.
2 Q. How old are you, Mazy?
3 A. I am 20 years old.
4 Q. Okay. And do you know this person sitting to
5 my immediate left?
6 A. Yes, he is my father.
7 Q. And his name is Kevin?
8 A. Um-hmm. Yes. I'm sorry.
9 THE COURT: Thank you.
10 Q. Where did you live back in December 31 of
11 2017?
12 A. I lived at 162 Barite Street with my father.
13 Q. And who did you live there with?
14 A. My father, my sister A.M. and my brother Z.W.
15 Q. How long did you live there?
16 A. Altogether?
17 Q. Yeah. Well, no, just -- just how long did you
18 live there?
19 A. Since we moved there in -- it was in like 2015
20 or '16. I'm not sure. So about two years, I guess.
21 Q. Okay. Did you have some -- well, you know
22 that this trial is about December 31, 2017 --
23 A. Yes.
24 Q. -- going into January 1, 2018?
25 A. Yes.

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1 It appears not.
2 We'll have you step down. Thank you for your
3 testimony.
4 Next witness, Mr. Woodbury.
5 MR. WOODBURY: Mazy Mentaberry.
6 THE COURT: Mazy, would you please raise your
7 right hand and be sworn.
8 (WHEREUPON, the witness was sworn)
9 THE COURT: Thank you. Could you please take a
10 seat up there. Door comes out to you. Watch your step.
11 All right. And we have been using this
12 microphone. I would like you to use it. Could you pull
13 that up here to your chest, about here.
14 THE WITNESS: Right there?
15 THE COURT: Yes. Thank you.
16 Then Mr. Woodbury has some questions for you.
17 Mr. Woodbury.
18 MAZY MENTABERRY
19 called as a witness in said case, having been first
20 duly sworn, testified as follows:
21 DIRECT EXAMINATION
22 BY MR. WOODBURY:
23 Q. Would you state your name, please.
24 A. My name is Mazy Mentaberry.
25 Q. And how do you spell Mazy?

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1 Q. Okay. And do you have a recollection of that
2 period of time?
3 A. Sort of. I remember some things, not
4 everything.
5 Q. Do you know where your dad works?
6 A. He worked at Elko Blacksmith Shop.
7 Q. Do you know what his job is?
8 A. What what?
9 Q. What his job is there.
10 A. Yeah, he is like the manager, I would say.
11 Q. And --
12 A. I guess.
13 Q. -- your mother is in town as well?
14 A. Yes.
15 Q. And what's her name?
16 A. Her name is Heather Mentaberry.
17 Q. All right. Are Heather and Kevin separated or
18 divorced or --
19 A. They are divorced.
20 Q. Did you have some medical problems around the
21 time of around December of 2017?
22 A. Yeah, I had recently had knee surgery.
23 Q. And had you been taking pills for -- was it a
24 painful injury?
25 A. It was. I had been prescribed pain pills, but

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1 I wasn't taking them. I decided to do medical marijuana.
2 Q. Okay. And why did you prefer marijuana over
3 the pills?
4 A. Pain pills make me really nauseous, and I just
5 don't have a very good reaction to them.
6 Q. Okay. And was that marijuana, this medical
7 marijuana, was that in your room that night of --
8 A. Yes, it was.
9 Q. -- December 31, 2017?
10 A. Yes.
11 Q. Did you have a friend staying with you?
12 A. I did. Her name is Cassidy Holton.
13 Q. Okay. And you were also -- you also had a
14 boyfriend?
15 A. Not at the time, no.
16 Q. Okay. And how did Cassidy come to be staying
17 with you?
18 A. We had been friends all through high school,
19 and she would stay over at our house all the time.
20 Q. And you were out of high school at that time?
21 A. Yeah, I had just graduated that year in June.
22 Q. Okay. So you graduated in June of 2017?
23 A. Um-hmm. Yes, sorry.
24 THE COURT: Thank you.
25 Q. Did you -- did it come to your attention that

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1 Q. And did -- you have to say "yeah."
2 A. What?
3 Q. You have to say "yes."
4 A. Oh, yes.
5 Q. Hard to remember.
6 A. Yes, I remembered.
7 Q. All right. You had a television in your room?
8 A. I did, yes.
9 Q. Did you have a door on your room?
10 A. No.
11 Q. How come?
12 A. It was being painted.
13 Q. Who was doing the painting?
14 A. Me. Just the -- getting the door back on took
15 a little bit longer.
16 Q. Did you know A.P.?
17 A. I knew she was a friend of my sister's.
18 Q. But you didn't know her otherwise, other than
19 she was a friend of your sister's?
20 A. Yeah.
21 Q. Did you meet her that night?
22 A. I didn't meet her that night.
23 Q. You had known her before?
24 A. Um-hmm.
25 Q. Known of her?

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1 A.M. was going to have some friends over on December 31?
2 A. Yeah, that day she had let me know that she
3 was planning on having a few friends over.
4 Q. Okay. And were there any particular plans
5 that involved you?
6 A. Not really, no. We were just kind of "go with
7 the flow" type of day, I guess.
8 Q. And when did Mazy -- or Mazy -- when did --
9 when did Cassidy get there?
10 A. I -- it was probably sometime early that day.
11 We usually -- we hung -- during that time, we would always
12 hang out all the time, so she probably -- I -- I don't
13 remember exactly, but --
14 Q. That's fine. All right. Did it come to your
15 attention that A.M.'s friends had arrived that evening?
16 A. Yeah, it was sometime around then. I don't
17 remember exactly when.
18 Q. Do you know her friends?
19 A. Yeah. Yeah, she had brought them to the house
20 multiple times, so I knew them.
21 Q. Okay. Did you have a -- you had a room in the
22 residence?
23 A. Yeah, I did. It was downstairs.
24 Q. It was downstairs?
25 A. Um-hmm.

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1 A. Yes.
2 Q. Okay. Did there come a time when everybody
3 came in your room, all the --
4 A. Yes.
5 Q. -- people that -- let me do it again.
6 All the people that A.M. had invited to the
7 residence came into your room?
8 A. Yes, we were all in my room.
9 Q. All right. And what happened when they got
10 there?
11 A. We were all smoking and drinking.
12 Q. Okay. Did you take any particular notice of
13 how much A.P. had to drink?
14 A. I at least saw her take two shots of the
15 vodka, and then I don't know how much Malibu she drank.
16 Q. Where was the Malibu?
17 A. I'm pretty sure she had it with her.
18 Q. Did you see it?
19 A. Um-hmm, in her -- in her hand.
20 Q. Where was it at -- where was it at when you
21 saw it?
22 A. She was sitting on my bedroom floor and it was
23 in her hands.
24 Q. And did you have any of the Malibu?
25 A. No.

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1 Q. Did your dad come down at some point that
2 evening into your room?
3 A. Yeah.
4 Q. Do you remember the circumstances under which
5 that happened, why he was there?
6 A. Yeah. I remember him confiscating my alcohol
7 and pretty much going.
8 Q. And what?
9 A. Confiscating the alcohol and then going
10 upstairs.
11 Q. All right. Did you know your dad -- did your
12 dad have a friend with him?
13 A. Yeah, his name was Nate.
14 Q. And was that the last time you saw your dad
15 that night?
16 A. No.
17 Q. When did you see him again?
18 A. Or, actually, that was the last time I saw
19 him.
20 Q. When your dad took the bottle of vodka, how
21 much of it was left?
22 A. Most of it.
23 Q. Can you -- how far away from your room is
24 A.M.'s room?
25 A. About three feet. They are right across from

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1 A. I'm pretty sure I had the TV on.
2 Q. The what?
3 A. The TV was on.
4 Q. And there was music playing on it?
5 A. I think so, yeah. I don't remember exactly.
6 Q. Do you remember your dad talking about how
7 loud it was?
8 A. No, I'm sorry, it's been a long time.
9 Q. That's all right.
10 MR. WOODBURY: All right. I have nothing further.
11 THE COURT: Cross-examination?
12 CROSS-EXAMINATION
13 BY MR. THOMPSON:
14 Q. Do you remember what time A.M.'s friends
15 showed up?
16 A. I think it was about 5:00 or 6:00.
17 Q. Okay. And did they come into your room at
18 that time?
19 A. Yeah, she -- I didn't see her come into the
20 house. They just kind of came downstairs and all of a
21 sudden were all in my bedroom.
22 Q. Right at 5:00 or 6:00?
23 A. Yeah.
24 Q. Okay. And were -- were you all drinking and
25 smoking at that point?

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1 each other.
2 Q. And did -- did you come out of your room to
3 celebrate midnight?
4 A. No, I had slept through the New Year. I took
5 a nap with my friend, and we passed out through it.
6 Q. You what?
7 A. We -- we were asleep when it was midnight.
8 Q. And after midnight, did you ever hear anybody
9 banging on the door to A.M.'s room?
10 A. No.
11 Q. Were you in a position where you would have
12 heard it had --
13 A. Yeah, I didn't have a door.
14 Q. Huh?
15 A. Yes, I didn't have a door, so I'm pretty sure
16 I would have heard that.
17 Q. Did you ever see your dad sitting on a couch
18 between A.P. and A.H.
19 A. No.
20 Q. During the time that you all were down there
21 in your room, were you playing cards or something like
22 that?
23 A. I don't remember what we were doing. I only
24 remember that we were smoking and drinking.
25 Q. And was there a -- was music on?

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1 A. Un-hmm.
2 Q. Is that a "yes"?
3 A. Yes.
4 Q. And -- and you were drinking too?
5 A. Yes.
6 Q. And everybody who had come in with A.M.
7 A. Un-hmm, yes.
8 Q. How much did you have to drink?
9 A. I would say about two shots.
10 Q. Two shots.
11 So this bottle of vodka, how big was it?
12 A. It was -- was this big. I'm not sure. I'm
13 not sure what the ounce size is, but --
14 Q. Was it about 16 inches tall?
15 A. Yes.
16 Q. Pretty tall bottle?
17 A. Un-hmm.
18 Q. And do you have any idea how many shots you
19 can get out of one of those bottles?
20 A. I'm not sure. I would say like ten to 12. I
21 don't -- I don't know.
22 Q. Ten to 12 shots in a bottle?
23 A. I think so. I -- I don't know.
24 Q. Okay. So did -- so you had a couple shots?
25 A. Yeah.

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1 Q. Did everybody have a couple shots, basically?
 2 A. Yes, that's what happened.
 3 Q. Was there anybody who wasn't drinking?
 4 A. I'm not sure. I wasn't really, I guess,
 5 watching every single person in the room.
 6 Q. Okay. And in between shots, are we smoking
 7 marijuana?
 8 A. Yes, it was kind of during all of the
 9 drinking, and it was --
 10 Q. This is your medical marijuana?
 11 A. Yes.
 12 Q. Where did you get that from?
 13 A. I don't remember.
 14 Q. But it was prescribed to you?
 15 A. It was.
 16 Q. But you are not supposed to share it with
 17 other people, right?
 18 A. Yes, I know that, but...
 19 Q. But you did it?
 20 A. I did, yes.
 21 Q. Was everybody else taking the marijuana or
 22 partaking in that?
 23 A. Yeah, I don't -- I don't remember exactly who
 24 all smoked marijuana, but...
 25 Q. Okay. Now, you were taking it for pain, you

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1 Q. I understand.
 2 And Cassidy, you said she had come over that
 3 day?
 4 A. That day, early that day.
 5 Q. What is early to you?
 6 A. What?
 7 Q. What is early to you?
 8 A. I would say earlier in the morning, like
 9 10 a.m.
 10 Q. Okay. And so with your knee injury, were you
 11 kind of laid up, like you are not supposed -- like bed rest
 12 almost, or were you able to move about?
 13 A. I was in -- I was recovering at this point
 14 from -- with physical therapy. So it was still pretty
 15 painful, but I was just working on getting my knee back to
 16 what it was before.
 17 Q. Okay. But I guess what I'm asking, you
 18 weren't stuck in your bed all day. You were able to move
 19 around?
 20 A. Not all day, but I wasn't up and walking
 21 around constantly.
 22 Q. You spent the majority of your day down in
 23 the room?
 24 A. Yeah.
 25 Q. And so while everybody is down there smoking

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1 said?
 2 A. Yes.
 3 Q. And so what was your regimen as far as taking
 4 it?
 5 A. I don't remember exactly what the prescribed
 6 dose was.
 7 Q. Let me ask you, how often would you take it?
 8 A. Just as needed with the pain.
 9 Q. So before everybody showed up, had you had
 10 marijuana earlier in the day?
 11 A. I don't remember.
 12 Q. Had you had any alcohol earlier in the day?
 13 A. No.
 14 Q. And the bong that you -- you were using a bong
 15 to smoke it?
 16 A. Yes.
 17 Q. Did that come with the marijuana when you had
 18 the prescription, or how did that come about?
 19 A. Yes, we -- we bought it with the prescription.
 20 Q. Like a little package of stuff or something?
 21 A. Um-hmm.
 22 Q. Is that a "yes"?
 23 A. Yes.
 24 Q. I know it's tedious, but --
 25 A. I'm sorry, I'm so used to "um-hmm."

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1 and drinking and playing games, I understand?
 2 A. I don't remember exactly what we were doing
 3 while we were smoking and drinking, but...
 4 Q. How long did that go on for, do you know?
 5 A. Maybe an hour. It wasn't very long.
 6 Q. Just with the same group, or did people come
 7 and go?
 8 A. No, it was just the same group.
 9 Q. Okay. Everybody getting along just fine?
 10 A. Yes.
 11 Q. And the way you make it sound, it sounds like
 12 you basically from that time on, you never came out of your
 13 room?
 14 A. I didn't, no. We -- after that, I remember we
 15 and Cassidy falling asleep and then waking up maybe at 1:00
 16 or 2:00 and going to the bathroom, and then that's it. I
 17 had went to bed pretty early that day.
 18 Q. Okay. And so other than helping with the
 19 pain, what other effects did the marijuana have on you?
 20 A. It made me drowsy.
 21 Q. Okay. Like more than a normal person?
 22 A. Yeah, I would say it made me sleepy, but
 23 that's about it.
 24 Q. Did you find that you sleep harder than a
 25 normal person?

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1 A. No.
 2 Q. No?
 3 A. Hm-hm. I'm a pretty light sleeper.
 4 Q. And what about the alcohol?
 5 A. I didn't have too much to drink, so I -- I
 6 would say I was buzzed.
 7 Q. Okay. And the combining effect of those two,
 8 did that have any effect on you?
 9 A. Not -- not -- I didn't really feel any
 10 different effect, I guess.
 11 Q. Okay. Did you guys eat anything?
 12 A. Yeah, yes. I don't remember what it was,
 13 though. I usually eat pretty good.
 14 Q. Okay. You don't remember a specific meal time
 15 or anything?
 16 A. No. We probably ordered pizza or something.
 17 I'm not too sure. We didn't go out and eat anywhere, so...
 18 Q. Okay. You don't remember going upstairs and
 19 everybody having a buffet or something like that?
 20 A. No.
 21 Q. Did you have any food downstairs?
 22 A. Probably. I usually eat down there. I don't
 23 remember.
 24 Q. Okay. And so you don't have a door on your
 25 room, as I understand it, correct?

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1 Q. Did you ever see Nate downstairs?
 2 A. Yes, him and Nate came into my bedroom at one
 3 point when we were all in there and just took my alcohol
 4 and left with Nate.
 5 Q. Now, when you are saying "my alcohol," what
 6 are you referring to?
 7 A. The bottle of vodka that I had.
 8 Q. Okay. You call that your alcohol?
 9 A. I guess. It was -- it was mine. I had gotten
 10 it.
 11 Q. Where did you get it?
 12 A. From a friend.
 13 Q. And how much earlier in the day or week
 14 preceding had you gotten it?
 15 A. I think it was that weekend. It was just from
 16 someone I had worked with.
 17 Q. So how did you come about with that alcohol?
 18 A. I -- she was 21, and I asked her to buy it for
 19 me, and she bought it for me.
 20 Q. Did she bring it over to the house?
 21 A. I worked with her, so I had went with her
 22 after work to go and get it. And she bought it and then
 23 dropped me off at home.
 24 Q. And this would be the day before?
 25 A. No, this was -- I usually worked weekends, so

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1 A. Yeah, yes.
 2 Q. And when you are inside your room where you
 3 guys were, can you -- when you look out your doorway, what
 4 can you see?
 5 A. Just my sister's bedroom door.
 6 Q. That's it?
 7 A. Um-hmm.
 8 Q. Is that a "yes"?
 9 A. Yes.
 10 Q. So you can't see into the living room at all?
 11 A. No, I can just see right to my sister's door.
 12 Q. Okay. Do you know if your dad had been
 13 drinking that night?
 14 A. Yes.
 15 Q. Okay. Was he intoxicated?
 16 A. Yes.
 17 Q. Had you seen him drinking?
 18 A. Yes.
 19 Q. What was he drinking?
 20 A. Bud Light.
 21 Q. Do you happen to know how many he had or where
 22 he was getting them from?
 23 A. I -- I don't know where or how many he had.
 24 Q. Did he have a friend over?
 25 A. Yes, it was Nate.

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1 it was sometime after work. I'm not sure exactly what day
 2 it was.
 3 Q. So if December 31, this New Year's party we
 4 are talking about was a Sunday, does that help you recall
 5 when you got the alcohol?
 6 A. It must have been -- it must have been
 7 sometime before then. I don't know when.
 8 Q. Okay. So did you open it brand-new this
 9 night?
 10 A. Yeah.
 11 Q. Okay. You had gotten it for New Year's, I
 12 presume?
 13 A. Um-hmm.
 14 Q. Is that a "yes"?
 15 A. Yes.
 16 Q. And you mentioned this bottle of Malibu. Did
 17 anybody else drink out of that?
 18 A. I saw A.P. drink out of it, my sister drink
 19 out of it, and I think another one of my sister's friends.
 20 Just a few people, not all of us.
 21 Q. And this is all at the same time, at five or
 22 six o'clock?
 23 A. Yeah, we all were just in my room.
 24 Q. When you are doing the alcohol drinks, are you
 25 mixing them? Are you making like a mixed drink or

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1 something?
2 A. No, we were just taking shots and swigs out of
3 the bottles.
4 Q. Using what kind of glasses or --
5 A. I had one shot glass, I think, that we were
6 all sharing.
7 Q. Do you know how much marijuana you put in the
8 bong?
9 A. I don't remember.
10 Q. How much does it hold?
11 A. About like this much (indicating), I would
12 say.
13 Q. Okay. So you've made a circle with your index
14 and your thumb. Is that --
15 A. I'm sorry, I don't know --
16 Q. That's okay.
17 A. -- how to explain how big or how much would go
18 in there.
19 Q. You think I'm doing something to accuse you.
20 I'm not. I'm just -- for the record, we have to describe
21 what the action was on your hand. It's the same thing as
22 when you say --
23 A. Oh.
24 Q. -- "um-hmm" or "hm-mm."
25 A. Okay.

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1 Q. Now, you slept through the New Year's?
2 A. Yeah.
3 Q. What's -- what's the last time you remember
4 being awake?
5 A. Probably like 7:00 or 8:00 that night. I
6 usually go to sleep pretty early because I had worked
7 morning shifts at 5:00, so my sleep schedule was kind of
8 set.
9 Q. You didn't have to sleep the next day?
10 A. No.
11 Q. So you think you went to sleep at 7:00?
12 A. 7:00 or 8:00. I know it was pretty early
13 because I woke up around 1:00 or 2:00, kind of just a
14 little bit awake. But I didn't have, I guess, a lot of
15 trouble going back to sleep.
16 MR. THOMPSON: I don't have anything else for
17 her.
18 THE COURT: Redirect?
19 MR. WOODBURY: Nothing.
20 THE COURT: Questions there for Mazy?
21 All right. I assume you are going to be held
22 subject to recall. So don't discuss this case or your
23 testimony with anyone while the trial is going on. Until
24 you hear from one of the attorneys that the trial is over,
25 you can assume it's still going on.

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1 Q. So I'm sorry, I wasn't critiquing you there..
2 So you have made an -- a circle with your
3 index finger and your thumb to describe the amount?
4 A. Yeah.
5 Q. And then is it like -- like a sphere of that
6 amount?
7 A. A sphere amount, yes.
8 Q. Okay. And that lasts for how long?
9 A. Four people, four to five -- four to five
10 hits, I guess. I don't really know how to explain it. It
11 depends on how much each person smokes, so..
12 Q. Inhales, is that what you are talking about?
13 A. Yeah.
14 Q. But it's not a ton?
15 A. It's not what?
16 Q. It's not a ton of marijuana, though?
17 A. I don't know. It affects each person
18 differently, so..
19 Q. Did you have to reload it multiple times
20 because of everybody?
21 A. I think once.
22 Q. One other time.
23 For the most part, do you know how much people
24 were taking from it?
25 A. I would say about a couple hits per person.

153

1 So you can discuss it with the lawyers, but
2 nobody else.
3 And all right. Any jury questions for Mazy?
4 Appears not.
5 All right. We'll have you step down.
6 All right. We are just about at noon then, so
7 the Court is going to take the afternoon recess. And if
8 the jury can be back at -- let's make it 1:15, quick
9 recess, so we can keep pressing on.
10 Please do not converse amongst yourselves or with
11 anyone else on any subject connected with the trial. Do
12 not read, watch or listen to any report or commentary on
13 the trial or any person connected with the trial by any
14 medium of information, including, without limitation,
15 newspapers, television, radio or the Internet.
16 And do not form or express any opinion on any
17 subject connected with the trial until the cause is finally
18 submitted to you.
19 You may not use any electronic device or media,
20 such as the telephone, a cell phone, smartphone, iPhone,
21 Galaxy, or computer, the internet, any internet service,
22 any text or instant messaging service, any internet chat
23 room, blog, or website such as Facebook, Instagram,
24 LinkedIn, YouTube or Twitter, to communicate to anyone any
25 information about this case until I accept your verdict.

155

1 In other words, do not talk to anyone on the
2 phone, correspond with anyone, or electronically
3 communicate with anyone about this case.

4 And, as usual, no conducting any form of
5 independent research or investigations or experiments prior
6 to during the jury deliberations.

7 This means you cannot do research such as
8 consulting dictionaries, using the internet or using
9 reference materials looking into the legal and factual
10 issues in this case.

11 You cannot make any investigations, test theories
12 of the case, re-create aspects of the case or in any other
13 way try to investigate or learn about the case on your own.

14 We'll see you back at 1:15. Please leave your
15 pads on the chairs

16 (Recess taken at 11:58 a.m.)

17 (Proceedings resumed at 1:27 p.m.)

18 THE COURT: We are back on the record for Case
19 CR-FP-18-5030, State versus Mentaberry.

20 We have Elko County Deputy District Attorney Chad
21 Thompson back to represent the State.

22 Mr. Mentaberry is back in court with his counsel
23 Gary Woodbury.

24 Will counsel stipulate to the full presence of
25 the jury and the alternate?

156

1 A. Roughly about three years and two months.

2 Q. Okay. Is that a residence you are buying?

3 A. Yes.

4 Q. How many floors does the residence have?

5 A. It has a main floor and a basement.

6 Q. And what is in the basement?

7 A. The basement consists of a laundry room, two
8 bedrooms, and a bathroom, and kind of a family area and a
9 little bit of an area with a bar in it.

10 Q. Have you made -- did you do any remodeling on
11 the house after you bought it?

12 A. I did not.

13 Q. What is your employment?

14 A. I work for the Elko Blacksmith Shop here in
15 town.

16 Q. And what is your job there?

17 A. I am a manager.

18 Q. And how long have you had that job?

19 A. Let's see, I started that about 2012.

20 Q. And who is the owner of business?

21 A. That would be my father --

22 Q. Okay.

23 A. -- John Mentaberry.

24 Q. And as a manager, what -- what actual jobs do
25 you perform?

158

1 MR. THOMPSON: Yes.

2 MR. WOODBURY: So stipulated.

3 THE COURT: Next witness, Mr. Woodbury?

4 MR. WOODBURY: Kevin Mentaberry.

5 THE COURT: Mr. Mentaberry, come on up.

6 We'll have you sworn in.

7 (WHEREUPON, the witness was sworn)

8 THE COURT: All right. Please have a seat at the
9 stand. Please be seated. Door comes out there. Watch your
10 step, too.

11 Mr. Woodbury, please proceed.

12 KEVIN JOHN MENTABERRY

13 called as a witness in said case, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WOODBURY:

17 Q. Would you state your name, please.

18 A. Kevin John Mentaberry.

19 Q. And Mentaberry is spelled how?

20 A. M-e-n-t-a-b-e-r-r-y.

21 Q. How old are you, Mr. Mentaberry?

22 A. Forty-two.

23 Q. Where do you presently reside?

24 A. I am here in Elko, off of 162 Barite Street.

25 Q. How long have you lived there?

157

1 A. Just about everything from job coordination to
2 employment personnel issues. It really all depends on
3 every day.

4 Q. Are you presently married?

5 A. No, I'm not.

6 Q. Were you previously married?

7 A. Yes, I was.

8 Q. To who?

9 A. Heather Gaines.

10 Q. And where does Heather live?

11 A. She's here in Elko.

12 Q. In 2017 -- in December of 2017, was there a
13 custody arrangement between you and your former wife of the
14 children?

15 A. When we initially got divorced, the papers
16 were wrote up 50/50 joint physical custody between the
17 kids. It was a week on, week off schedule. It doesn't
18 always happen like that.

19 Q. And by December of 2017, were -- where were
20 the kids living?

21 A. They were with me.

22 Q. Okay. And how many children do you have?

23 A. I have three kids.

24 Q. Okay. What are their names, please?

25 A. I have a -- well, currently a 11-year-old son,

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1 Z.M.; my middle daughter, A.M., she is 17; and my daughter
2 Mazy, which she, I believe, is 20.

3 Q. All right. Back in December of 2017, did you
4 have any animals that lived with you?

5 A. I did, my black lab, Raven.

6 Q. Did it come to your attention that there was
7 going to be a party or a hang-out at your house on -- in
8 December of -- December 31, 2017?

9 A. Yeah. I had -- I had discussed that with my
10 daughter A.M. As far as -- I wouldn't call it a party. I
11 was aware that there were going to be two girls, A.T. and
12 A.H., staying the night.

13 Q. Okay. And did you know who A.T. and A.H.
14 were?

15 A. Yes.

16 Q. Who was A.T.

17 A. They are good -- A.T. is one of A.M.'s good
18 friends, a common hang-out person, if you will.

19 Q. In response to A.M. telling you that, did you
20 do anything, make any arrangements?

21 A. It -- with being a single parent, I have come
22 to a custom that, you know, it's always in the back of your
23 head, you try to have, you know, a plan for the kids.

24 Earlier that day, I had went to the store and
25 gathered up a little bit food, some chips, some pop, and a
160

1 of nine.

2 Q. And you indicated that you bought a 12-pack of
3 Bud Light?

4 A. I did.

5 Q. Okay. And where -- did you drink any of that
6 Bud Light --

7 A. Yeah, I did

8 Q. --- after you bought it?

9 A. I did.

10 Q. When did you bring it home?

11 A. A guesstimate in time around that day, that
12 had to have been around four o'clock, around, ballparking,
13 four o'clock.

14 Q. When did Nate come over?

15 A. I picked him up around 5:30, I believe.

16 Q. Where did you pick him up?

17 A. At his house.

18 Q. All right. Prior -- did you have anything
19 else to drink before you had the Bud Light?

20 A. No.

21 Q. Did you have hard alcohol in your house?

22 A. No.

23 Q. Okay. Is there a reason for that?

24 A. Yes.

25 Q. What is the reason?
162

1 12-pack -- 12-pack of Bud Light.

2 Q. And was it your -- what was your intent with
3 respect to some of the food?

4 A. My idea was to put the chips downstairs on the
5 bar, and we -- or I guess I attempted to barbecue that
6 night, but it didn't quite work out.

7 Q. Okay. What happened to the barbecue that
8 night?

9 A. During -- well, when we had went downstairs
10 the first time, we discovered the alcohol that the kids
11 were drinking, and during confiscating that, before we went
12 downstairs, I had put the burgers on the grill and
13 nuclefied (phonetic) them, basically.

14 Q. Did what?

15 A. Burned them, left them on the grill entirely
16 way too long.

17 Q. Can you describe the stairs that you go down
18 to get to the basement in your residence?

19 A. They are not pleasant. They are steep, awful,
20 short steps. They are steep.

21 Q. With respect to the -- did you have a friend
22 over?

23 A. I did.

24 Q. And who was that friend?

25 A. That is Nate. At the time, he was a employee
161

1 A. My mother died -- my mother died of a
2 combination of alcohol and pills.

3 Q. Um-hmm.

4 A. About five years ago.

5 Q. So how much of the Bud Light did you drink?

6 A. At what time, sir?

7 Q. Throughout.

8 A. Throughout the night?

9 Q. Throughout the evening.

10 A. If I was guesstimating, around 8:00, 8:00 to
11 9:00.

12 Q. Okay. And what did -- did Nate do any --
13 consume any alcohol?

14 A. He was drinking with me. He was pretty much
15 not -- I wouldn't say three sheets to the wind when I
16 picked him up, but you could definitely tell that he was --
17 he was on one already.

18 Q. Okay. And so when did you think you started
19 drinking the Bud Light?

20 A. Let's see, after I got back from the store
21 that day, when I was putting everything away, I -- I had
22 cracked a beer at that time.

23 Q. Okay. And did you drink more or less
24 steadily -- the Bud Light more or less steadily after that?

25 A. Yeah, especially once me and Nate got back to
163

1 the house, it was -- it was on.
 2 Q. Okay. Did you -- do you recall there being
 3 testimony about you being asleep on the couch?
 4 A. I'm sorry?
 5 Q. Do you recall in this trial there has been
 6 testimony about you being asleep on the couch?
 7 A. Bits and pieces.
 8 Q. Huh?
 9 A. Bits and pieces of it. Are -- are you
 10 asking --
 11 Q. Oh, yeah, okay. As long as you remember.
 12 Did you go to sleep on the couch that night?
 13 A. I wouldn't necessarily call it sleep. I
 14 wasn't in a full dead sleep. If I was to describe it, it
 15 would be more or less of in and out.
 16 Q. Okay. On the couch upstairs is what I am
 17 talking about.
 18 A. I'm sorry?
 19 Q. On the couch upstairs.
 20 A. You are going to have to reask the question,
 21 sir.
 22 Q. I am asking you whether you ever went to sleep
 23 on the couch upstairs in the evening of December 31.
 24 A. No.
 25 Q. Did there come a time when you took note of

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1 And I believe I remember seeing a white
 2 bottle.
 3 Q. A white bottle of what?
 4 A. I believe the Malibu, Malibu rum.
 5 Q. Did you see any vodka?
 6 A. I'm sorry?
 7 Q. Did you see any vodka?
 8 A. Yes.
 9 Q. All right. What did you do with the vodka?
 10 A. At that point, we didn't really exchange
 11 words, but it was pretty much a -- they knew that they were
 12 busted.
 13 My biggest concern was that vodka. The
 14 Malibu, I really didn't care too much about. But we --
 15 we -- both me and Nate, we ended up grabbing a bottle
 16 apiece and taking them upstairs.
 17 Q. A bottle of what?
 18 A. A bottle of vodka and a bottle of Malibu.
 19 Q. Oh. One of you had one of them, and one of
 20 you had the other?
 21 A. Yes.
 22 Q. Okay. And when you got upstairs, what did you
 23 do with them?
 24 A. By that time, I wasn't even halfway up the
 25 stairs, and I had noticed my patio -- because if you look

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1 A.M.'s friends arriving?
 2 A. During that time, I -- I can't honestly say
 3 that I witnessed people coming in the house. I really
 4 didn't get a good idea until me and Nate went downstairs
 5 the first time.
 6 Q. Okay. And when you went downstairs the first
 7 time, do you have any idea what time that was?
 8 A. Ballparking, around 7:30, 7:30-ish.
 9 Q. And what was your reason for going downstairs?
 10 A. The thing that drew us down there was the loud
 11 music and the chaos. It seemed like there was chaos going
 12 on down there.
 13 Q. Describe the chaos.
 14 A. Screaming, laughing, the music.
 15 Q. And when you got down there, what did you see?
 16 A. When we first went downstairs, I recall people
 17 going back and forth, and I went directly into Mazy's room
 18 because that's where the majority of the sound was coming
 19 from, or the noise.
 20 Q. When you got in Mazy's room, what did you see?
 21 A. The first thing, even before I noticed --
 22 going into Mazy's room, I could smell weed. I had looked
 23 in the room, and I seen kids sitting on the floor. I seen
 24 a bong next to -- either it was A.H. or A.T., I believe,
 25 sitting on the floor.

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1 at the pictures, if you go upstairs, the first thing you
 2 can see is a wall, and right next to it my back patio. The
 3 thing that caught my eye going upstairs was the smoke
 4 billowing out of my barbecuer.
 5 At that point, I had set the bottle on the
 6 table and addressed the fire issue that I had going on on
 7 the patio.
 8 Q. And then what did you do?
 9 A. Figured that we didn't have -- not much to
 10 eat. And me and Nate had sat at the table. He was pretty
 11 much at that point deciding that he was done for the night.
 12 Between -- and he -- I remember him telling me that "this
 13 is not a good situation with these kids drinking that
 14 shit," drinking the stuff in the house.
 15 Q. And the words you just used were Nate's words?
 16 A. Yes, sir.
 17 Q. So did Nate leave then?
 18 A. He did.
 19 Q. Do you remember how he left?
 20 A. I believe he called a taxicab. I don't recall
 21 seeing him get into a cab.
 22 Q. And do you have any idea what time Nate left?
 23 A. Between 8:30 and 9:00. I don't have an exact
 24 time.
 25 Q. And after Nate left, what did you do?

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1 A. I went to bed. The damage was done. I was --
2 between messing up the barbecue, the kids drinking
3 without -- basically the kids sneaking that alcohol into my
4 house in the very first place between -- now I come to find
5 out, I guess, it was Mazy that got the vodka.

6 Q. Did you know that before she said it today in
7 court?

8 A. No, I did not.

9 Q. Where is your bedroom?

10 A. My bedroom is upstairs directly right above
11 Mazy's room.

12 Q. You have a son too?

13 A. I do.

14 Q. And did you see him around up to that point?

15 A. Up to the point of Nate going home, is that
16 what you are ---

17 Q. Of -- yeah, up until the point of Nate going
18 home.

19 A. I don't really recall a whole lot of Z.M. I
20 remember he was around in the basement. Now that I think
21 about it, I recall him downstairs at the time when me and
22 Nate went downstairs, and I believe he was playing video
23 games.

24 Q. So after Nate left, you went to bed. How long
25 did you stay in bed, do you know?

168

1 Q. Were you intoxicated?

2 A. Yes, I was.

3 Q. Can you describe for the jury how badly
4 intoxicated you were, as you recall it?

5 A. I wouldn't say I was -- I blacked out once in
6 my life, and that was in Mexico. And the only real reason
7 I know that is because of people telling me after the fact.

8 As far as an intoxication level, I was pretty
9 drunk before 8:30, nine o'clock. Laying down for two to
10 three hours, it -- I -- I wasn't trashed. I wasn't so
11 drunk that I couldn't quite concept or understand people or
12 situations. My awareness level, when I woke up, was still
13 about the alcohol in my basement.

14 Q. And so -- if you had a smoke outside, then
15 where did you go?

16 A. I went downstairs. Attempted to go
17 downstairs.

18 Q. What did you see when you got downstairs?

19 A. I'm sorry?

20 Q. What did you see when you got downstairs?

21 A. First thing I seen was to the left, the
22 bathroom light was on. I noticed the laundromat light was
23 on. Didn't notice any lights to Mazy or A.M.'s room. And
24 I noticed off to the right towards the direction of the TV,
25 that A.H. was on the end of the couch, and I believe A.P.

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1 A. The next thing I recall is waking up to a
2 thump or -- it sounded like something hit the wall.

3 Q. In any particular place in the home?

4 A. It sounded like directly right below me.

5 Q. And what would be directly right below?

6 A. My daughter's bedroom, Mazy.

7 Q. Mazy's?

8 A. Yes, sir.

9 Q. Okay. So what did you do?

10 A. When I got up, I was still clothed. Went down
11 the hall, went into my kitchen. The first thing that I
12 noticed was the liquor that we had taken was no longer
13 upstairs. I took a few seconds to -- I believe I had a
14 cigarette at the time. And then --

15 Q. Do you have -- where did you smoke a
16 cigarette?

17 A. Right there by the patio where the barbecue
18 is.

19 Q. Outside?

20 A. Yes.

21 Q. Okay. Then what did you do?

22 A. Then went downstairs, tried to go downstairs.

23 I -- I'm not going to say I was tripped, but I tripped --

24 Q. Were you intoxicated?

25 A. -- and fell down the stairs.

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1 was on the open end of the couch. It's an L-shape.

2 Q. And did you know A.P.?

3 A. I did not.

4 Q. When -- when did you meet her?

5 A. I can't say that I was ever introduced to her.
6 The first initial, when me and Nate had went downstairs,
7 the -- A.P. and one of the girls sitting on the couch was
8 sitting on the floor, and I believe at that time she had a
9 beanie. And at that time A.M. had pointed over and said,
10 "This is A.P." And that's about the most of the -- extent
11 of an introduction or meeting her that I got.

12 Q. And you didn't -- hadn't seen her arrive at
13 the house?

14 A. No.

15 Q. So you said you tripped as you went down the
16 stairs. What happened to you?

17 A. One foot in front of the other did not work, I
18 guess.

19 Q. Did you fall to the floor?

20 A. I fell down the stairs.

21 Q. And how far down? Third of the way? Halfway?

22 A. All the way. I ended up --

23 Q. Well, where were you at when you tripped?

24 A. At the very top.

25 Q. Really? Did you hurt yourself?

171

1 A. I didn't feel it at the time, no.
 2 Q. And when you got down to the floor of the
 3 basement, how were you -- how were you located?
 4 A. Flat on the ground.
 5 Q. Okay. So what did you do?
 6 A. Gathered myself together, stood up. The next
 7 thing I recall is seeing my dog on the couch and seeing
 8 that white bottle of Malibu on the table. And directly
 9 went over there and grabbed the bottle of Malibu, took it
 10 over to the bar, kind of analyzed what was going on there
 11 and sat down on the couch.
 12 Q. All right. Did -- did you take any drinks of
 13 the Malibu?
 14 A. No.
 15 Q. Then when you sat down on the couch, where did
 16 you sit?
 17 A. I sat down between Raven and A.H., I guess.
 18 Q. That would be on your left side?
 19 A. Yes.
 20 Q. And between -- who was on the other side, your
 21 right side?
 22 A. On my right side would be my dog Raven and
 23 then A.P.
 24 Q. Raven was between you and A.P. or between you
 25 and A.H.

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1 New York Times Square on that TV. Whether it was a
 2 commercial or a highlight of that, I don't know. But I do
 3 recall briefly seeing the crowd, the big white ball in the
 4 column. I do.
 5 Q. And did you know what -- the TV, do you know
 6 what channel it was tuned to?
 7 A. No clue. At the time I had a smart TV, and
 8 I'm not sure exactly what -- we had, like, YouTube. We
 9 didn't have any, like, NBC or CBS, like local TV stations.
 10 It was basically just a smart TV with, like, Hulu, Amazon
 11 Prime, I guess.
 12 Q. Okay. And so now, do you know what -- whether
 13 that was -- you were watching the ball fall in New York at
 14 midnight New York time, midnight Elko time, midnight some
 15 other time?
 16 A. The best of my recollection was it was
 17 sometime after midnight.
 18 Q. And did you watch anything else on the TV?
 19 A. I do recall seeing a show, I guess. Now that
 20 I've learned about everybody's testimony, I guess it's
 21 called Pretty Little Liars.
 22 Q. Were you aware of that show before?
 23 A. No.
 24 Q. And did you watch the television?
 25 A. I did. I recall that -- I recall like a --

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1 A. I recall between me and A.P.
 2 Q. You heard A.H. testify that the dog was
 3 between you and her?
 4 A. Yes.
 5 Q. So your -- your recollection is slightly
 6 different?
 7 A. It -- I don't remember every little detail,
 8 There -- there is a chance that the dog could have been
 9 over there.
 10 Q. So after you sit down on the couch -- first of
 11 all, did you have any discussion with either A.H. or A.P.
 12 at that time?
 13 A. I think I had asked A.H. how much she had to
 14 drink. And she wasn't sleeping or passed out. She was
 15 just drunk, wasted drunk.
 16 Q. And when you -- did you have any conversation
 17 with A.P. that you remember?
 18 A. I do not recall a conversation with A.P.
 19 Q. Well, was the television on?
 20 A. I believe so.
 21 Q. When you sat down on the couch?
 22 A. Yes.
 23 Q. Do you recall seeing a ball falling in New
 24 York having this celebration of New Year's?
 25 A. That is one of my recollections of seeing the

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1 two young girl students and a teacher, and that's about my
 2 recollection of what kind of popped on the TV.
 3 Q. And did you watch the entire show --
 4 A. No.
 5 Q. -- or no?
 6 A. No, I don't recall watching.
 7 Q. So what did you do?
 8 A. At that point, I think I was in and out.
 9 Q. By -- what do you mean by "in and out"?
 10 A. In and out, kind of fading out but aware.
 11 Q. I'm sorry?
 12 A. Kind of fading out but aware.
 13 Q. All right. Getting drowsy or sleepy or --
 14 A. Yeah, I guess that would be a good word for
 15 it.
 16 Q. It wasn't being passed out?
 17 A. No.
 18 Q. Okay. And what's the next thing you remember?
 19 A. Next thing I remember was A.H.'s voice asking
 20 me to go upstairs.
 21 Q. And did you understand -- was she telling you
 22 to go upstairs, or asking or --
 23 A. No, I think it was more or less like, "We're
 24 going to bed. Go upstairs."
 25 Q. And so what did you do?

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1 A. I went upstairs and went to bed.
2 Q. And did you have the dog with you?
3 A. My dog is always by my side. Not that you
4 care, but there is -- I had a Australian shepherd die about
5 seven months prior to that. So she was going through a
6 major separation anxiety to the point where I'd bring her
7 to work with me because she ate through a \$3,000 leather
8 couch in my house when I left her alone.
9 Q. All right. So when you went upstairs, what
10 did you do?
11 A. Went to bed.
12 Q. You've heard the testimony from A.P. that you
13 touched her.
14 A. I understand that.
15 Q. Did you touch her?
16 A. Absolutely not.
17 Q. If you were fading in and out of sleep, is it
18 possible your hand went over onto -- touching --
19 A. No.
20 Q. I'm sorry, what?
21 A. Not without somebody witnessing it. I'm
22 sorry.
23 Q. I'm sorry?
24 A. Not without somebody witnessing it.
25 Q. All right. And you don't have any

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1 dressed and have a cigarette and a cup of coffee.
2 Q. Okay. Did there come a time when you took
3 some of the -- of A.M.'s friends in your pickup?
4 A. Yes, we did take everybody home that next
5 morning.
6 Q. How did that get arranged?
7 A. As far as an arrangement, there was no
8 arrangement. It was just kind of everybody needed to go
9 home that day.
10 Q. When you saw A.P. in the basement, did you
11 know whether she was going to stay all night or not?
12 A. I had no idea that -- she was not at -- my
13 daughter did not ask me for another person to stay that
14 night.
15 Q. And you would have expected her to do so?
16 A. Yeah, me and my kids have that kind of
17 relationship.
18 Q. And then I gather that you heard A.P. say that
19 you apologized to her when you dropped her off for acting
20 like a drunken fool or something like that?
21 A. I did.
22 Q. Did you -- did you say that?
23 A. Not directly to her.
24 Q. Who did you say it to?
25 A. That was everybody in the truck.

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1 recollection of it?
2 A. No, I do not.
3 Q. Did you ask -- you've heard A.P. say that you
4 were asking her questions. Do you remember asking her
5 questions?
6 A. No.
7 Q. You've heard A.P. testify about you making
8 requests of her. Did you ask -- did you make those
9 requests of her?
10 A. No, I did not.
11 Q. So after you went back upstairs to bed, did
12 you ever come back down the stairs?
13 A. No.
14 Q. I mean that night.
15 A. No.
16 Q. You went to bed. And what is the next thing
17 you remember?
18 A. Waking up.
19 Q. Do you know about what time you woke up?
20 A. Usually I am dead-on six o'clock. My body and
21 my mind has got used to that. So if I was guesstimating,
22 probably sometime after 6:00.
23 Q. Okay. And when you got up, what did you do,
24 if you remember?
25 A. Usually my first step in the morning is get

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1 Q. And what did you mean by that?
2 A. You know, in a -- in a sense, I felt somewhat
3 responsible for not feeding them, number one. Number two,
4 I felt that I was the bad adult for ruining their little
5 shindig that they had downstairs.
6 Q. And how did you ruin it?
7 A. By confiscating their alcohol.
8 MR. WOODBURY: Thank you. I have no further
9 questions.
10 THE COURT: Cross-examination.
11 CROSS-EXAMINATION
12 BY MR. THOMPSON:
13 Q. You felt bad for taking their alcohol?
14 A. Sorry?
15 Q. You felt bad for taking their alcohol?
16 A. I did.
17 Q. Why?
18 A. I kind of felt bad for ruining their night.
19 Q. Did you take their marijuana?
20 A. I did not.
21 Q. Why not?
22 A. Mainly because my daughter Mazy had just got
23 done -- well, not just got done, but she was going through
24 rehabilitation on having meniscus repair on her knee, and I
25 preferred her -- and she preferred not to take medication

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1 that she was prescribed for pain management.
 2 Q. But she was letting all these other girls
 3 smoke the marijuana, wasn't she?
 4 A. Didn't witness it.
 5 Q. You didn't think that they had been smoking
 6 marijuana?
 7 A. I personally didn't see any of the kids
 8 smoking.
 9 Q. Weren't they all sitting around the bong
 10 right there?
 11 A. (Shrugs)
 12 Q. You have to answer out loud. I'm sorry.
 13 A. Yeah. Yes, they were sitting around the bong.
 14 Q. And you didn't think that surely the kids are
 15 probably smoking as well as drinking?
 16 A. At the time, I more -- my concern and my
 17 concentration was on that vodka, the lesser of two evils,
 18 if you will.
 19 Q. The lesser of two evils for these teenagers?
 20 A. Absolutely.
 21 Q. Why didn't you call any of their parents or
 22 send them home?
 23 A. At that point, I felt like I didn't want to be
 24 that dad. And I was intoxicated. I didn't want to be that
 25 party pooper, if you will.

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1 would have been okay with that?
 2 A. Probably not. I -- I don't know if there is a
 3 correct answer to that.
 4 Q. When you confiscated the vodka, you didn't
 5 drink any of it?
 6 A. Me and Nate did, when we -- when we took it
 7 upstairs and I was attending to the barbecue fire, I did.
 8 I did take a shot of vodka with Nate.
 9 Q. More than one shot?
 10 A. Just one shot.
 11 Q. Just one. How big a bottle was it?
 12 A. Would that be a pint or a -- a --
 13 Q. I don't know. If you're using -- I don't know
 14 if you're using your thumb and your index finger or if
 15 you're using the whole table.
 16 A. It's 16 -- 16, 17 inches tall.
 17 Q. Okay.
 18 A. Three inches in diameter.
 19 Q. How many shots can you get out of that thing,
 20 if you know?
 21 A. Beyond me. I have no clue.
 22 Q. Do you know how full it was when you
 23 confiscated it?
 24 A. It was probably halfway, guesstimating halfway
 25 full.

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1 Q. You wanted to be the cool dad?
 2 A. Not necessarily the cool dad. I didn't -- I
 3 don't need to be cool in front of kids.
 4 Q. Why not just let them have it? It's New
 5 Year's Eve, just one bottle?
 6 A. No. You have no idea about my family history;
 7 is that correct?
 8 Q. Sorry. I am the one asking the questions
 9 here.
 10 A. Excuse me.
 11 Q. So by the time you went down there to
 12 confiscate it, how many beers had you had?
 13 A. I'm going to round it off to probably eight,
 14 eight to nine.
 15 Q. And in your mind, beers are less harmful than
 16 hard alcohol?
 17 A. Absolutely.
 18 Q. I'm sorry?
 19 A. Yes.
 20 Q. Why? They still have alcohol, right?
 21 A. They do. I was born and raised by an
 22 alcoholic, and I have always been against hard alcohol.
 23 Q. But beers not so much? That's okay?
 24 A. Yes.
 25 Q. So if the kids had had beers downstairs, you

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1 Q. I'm sorry, if you said how many ounces it was,
 2 I can't remember right now. The whole bottle, how big is
 3 it?
 4 A. 16 inches tall, 3 inches diameter.
 5 Q. But you don't know how many ounces it is, is
 6 what I'm asking.
 7 A. If I was guesstimating, 16.
 8 Q. Sixteen ounces? And a shot constitutes how
 9 much, like an ounce, two ounces?
 10 A. That much. (indicating)
 11 I don't know. I -- I don't know liquid
 12 measurement.
 13 Q. Okay. And there was one vodka bottle or two?
 14 A. There was -- we confiscated one bottle of
 15 vodka and one white bottle of Malibu.
 16 Q. And what is Malibu?
 17 A. I believe it's rum, now that I get to learn
 18 about it.
 19 Q. Okay. And how full was that one?
 20 A. I have no clue. It's pure white.
 21 Q. It's what?
 22 A. The bottle is pure white.
 23 Q. Oh, meaning you can't see through it?
 24 A. Correct.
 25 Q. I see. Did you guys take a shot of the rum?

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1 A. No.
2 Q. Any particular reason why the vodka was okay,
3 the rum not?
4 A. I think like that Malibu rum is like a -- a
5 woman foo-foo drink.
6 Q. Ah.
7 A. I'm not one for sweet stuff.
8 Q. I see. Okay. So did you end up feeding them
9 anything?
10 A. No.
11 Q. Not at all?
12 A. No.
13 Q. And you think you went down there and
14 confiscated these around 7:00, 7:30?
15 A. The more me and my lawyer talked about it, we
16 had to base a lot of this timeline off of when we found
17 factual record of a taxicab arriving at my house.
18 Q. I am asking you your memory. You didn't
19 testify about a taxicab or anything. You testified about
20 what time you went down there, and I am asking what your
21 memory is today.
22 A. Around 7:30.
23 Q. 7:30. And you think A.P. was there already?
24 A. She had to have been there by 7:30 because she
25 was in the room sitting on the floor at that time when we

1 confiscated the bottles.
2 Q. Now, you heard both A.H. and Mazy testify that
3 there was drinking and alcohol going on well before A.P.
4 got there. Are you sure it wasn't that first time?
5 A. No, no. We went downstairs around 7:30, eight
6 o'clock and found the bottles.
7 Q. And at that time, you've already described
8 A.H. You said she was really drunk, she was wasted. Was
9 anybody wasted when you went down there?
10 A. Not that I seen. I couldn't really put
11 judgment on A.P. because I didn't know her.
12 Q. I am not asking about A.P. I am asking about
13 anybody.
14 A. I didn't see anybody else --
15 Q. Okay.
16 A. -- in the basement other than A.P. sitting on
17 the couch and A.H. sitting on that couch.
18 Q. Sorry, I'm -- I must have confused you there.
19 I am talking about first time when you go down
20 and confiscate the vodka. Was anybody intoxicated at that
21 time inside Mazy's room?
22 A. They were having a good time, I mean, hence
23 the loud music, the loud speaking. It's what drew us
24 downstairs.
25 Q. Okay. Now, you go upstairs, you have your

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1 drink, put out the fire or whatever -- was it on fire or
2 just smoking really bad?
3 A. It was -- it caught on fire once I lifted up
4 the hood of the barbecuer. It was more or less smoldering,
5 billowing out of the vents, out of the front cover.
6 Q. So how long did you deal with that?
7 A. Roughly a few minutes, just enough time to get
8 to the kitchen sink, get some water on it and unplug it.
9 It's a pellet barbecue.
10 Q. Then you said you went to bed?
11 A. Yes, Nate went home and I went to bed.
12 Q. And you heard a loud thump, you said?
13 A. It sounded like something hitting the wall.
14 Q. And Mazy's room would be directly below you?
15 A. Yes.
16 Q. But you never went to Mazy's room. How come?
17 A. I'm sorry?
18 Q. But you never went to Mazy's room. How come?
19 A. When I went -- when I went downstairs?
20 Q. Yeah, you described going downstairs --
21 A. Lights were off.
22 Q. -- and falling.
23 A. Yeah. Lights were off. I figured those guys
24 were in bed.
25 Q. The lights were on in the bathroom and the

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1 laundry room, you said, though?
2 A. Yeah, not in her bedroom or A.H.'s.
3 Q. But you went down to check on a thump and then
4 chose not to?
5 A. I'm sorry, what?
6 Q. You went down to check on a thump, but then
7 you -- when you got there, you chose not to?
8 A. Yeah, the -- the laundry light was on. The
9 bathroom light. Her bedroom light was off, and A.H.'s door
10 was, I believe, closed at that time.
11 Q. So did you actually make the decision, well,
12 I'm not going to check on the thump, or was this just part
13 of the alcohol where you're just not thinking straight?
14 A. It very well could have been. It could have
15 been didn't see anything and --
16 Q. Got distracted from your fall?
17 A. I wouldn't necessarily say that.
18 Q. Now, you don't know A.P. at all, right?
19 A. Not one bit.
20 Q. A.H. you know a little bit?
21 A. I know A.H. a lot.
22 Q. At this time, on December 31, 2017?
23 A. Yeah, you bet.
24 Q. Okay. So do you hang out with your daughter's
25 friends when your daughter is not around?

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1 A. No.
2 Q. Then why did you sit down with these two
3 friends?
4 A. I -- my intentions was that bottle of the
5 booze, getting the bottle, getting the booze completely out
6 of that basement for the second time.
7 Q. But you didn't do that, though. You just put
8 it on the bar.
9 A. I did, yeah. You're right.
10 Q. Why didn't you take it upstairs?
11 A. Didn't feel the need, I guess. I don't know
12 why I didn't take it upstairs.
13 And you are talking the second time, correct?
14 Q. Yeah, just -- just right after you fell. And
15 I asked you why you were hanging out with these two girls
16 when your daughter is not around.
17 A. I don't have a good answer for that, sir,
18 to --
19 Q. The alcohol talking possibly in your brain?
20 A. Very well could have been.
21 Q. Alcohol has a tendency to reduce your
22 inhibitions; isn't that correct?
23 A. I am not a specialist in it, so I couldn't
24 answer that with -- with backing.
25 Q. Well, you heard Mr. Woodbury's examples to

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1 on the couch, just like a real uneasy -- like a drunk
2 person, like a completely wasted drunk person.
3 Q. Are you sure you weren't the one swaying?
4 A. I don't -- I don't have an answer for that,
5 sir.
6 Q. So you were worried about A.H., so that's why
7 you chose to sit down?
8 A. There was concern definitely for -- for the
9 condition of A.H., yeah.
10 Q. Did you think about calling her mom or dad at
11 that point in time?
12 A. No.
13 Q. So you sit down on the couch, and the dog is
14 between you and A.P. is what you said?
15 A. I believe, but I don't have a hundred percent
16 clarity on that. I don't recall whether the dog was
17 between me and A.P. or between me and A.H.
18 Q. Well, didn't you originally testify that it
19 was between you and A.P.? It wasn't until Mr. Woodbury
20 backed you up and started asking you, "Are you sure it
21 wasn't over there by A.H.?"

22 MR. WOODBURY: I never said any such thing. We
23 resent the representation that I did that by leading him
24 and arguing with him, where that dog was. I suggested that
25 he had heard A.H. testify where the dog was.

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1 Dr. Piasecki about being able to jump over a fence when in
2 reality you can't. Isn't that typically --
3 A. Sure.
4 Q. -- what alcohol does --
5 A. Yeah.
6 Q. -- for you?
7 A. I've heard that theory before, being
8 bulletproof.
9 Q. Yeah. Liquid courage?
10 A. Sure, yeah.
11 Q. Might that also be something that makes you
12 think, huh, I will sit down with these two girls even
13 though they are 14?
14 A. I didn't think anything of it.
15 Q. You don't remember talking to A.P. and asking
16 her if she was A.H.'s older sister?
17 A. I do not.
18 Q. Did you know A.H. had an older sister?
19 A. I did not.
20 Q. You have no memory of talking to them
21 whatsoever?
22 A. I have memory of talking with A.H.
23 Q. And what was that about?
24 A. I believe I recall asking her if she was going
25 to be okay, because she was kind of swaying back and forth

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1 THE COURT: All right. Well, I think comments on
2 another questioner's questions are argumentative.
3 So ask another question.
4 Q. (By Mr. Thompson) How big is this dog?
5 A. Raven, she's -- at the last vet check, I think
6 back in April, she was 67 -- about 67 pounds.
7 Q. And at this time about the same size?
8 A. At this time, I don't know actually. In the
9 last couple years she's gained quite a bit of weight.
10 Q. How big was she back in December, December of
11 2017?
12 A. Between 60 and 70 pounds.
13 Q. So you remember watching TV, though?
14 A. Bits and pieces. I remember the -- the ball.
15 Whether it be a commercial or some kind of an ad, I do
16 recall seeing that on the TV.
17 Q. So you were awake?
18 A. I was aware. I was -- like I expressed to my
19 lawyer, I was in and out.
20 Q. And as much as you love your dog, you were, I
21 assume, petting the dog, had your hand on the dog?
22 A. I don't recall petting my dog.
23 Q. You wouldn't be surprised if you were petting
24 the dog, though?
25 A. I very well could have pet my dog, yeah.

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1 Q. Didn't your hand start to graze A.P.'s leg
2 while you were petting the dog?
3 A. Absolutely not.
4 Q. How long do you think you were awake before
5 you fell asleep? Now, you've described that once you get
6 on the couch, at some point in time you're out. The next
7 thing you remember is A.H. asking you to go upstairs.
8 A. Like I said, I was in and out for the duration
9 of time. If that is what you're asking of how long I was
10 on the couch, I would roughly guesstimate it 30 minutes.
11 By the time I went downstairs, grabbed the bottle, put it
12 on -- yeah, 30 minutes, rough.
13 Q. From the time you went downstairs to the time
14 that A.H. sent you back up?
15 A. Correct.
16 Q. You didn't ask the girls to sit on the couch?
17 A. Did I ask the girls?
18 Q. Yes, did you ask the girls to sit on the
19 couch?
20 A. No, I did not.
21 Q. So at that point in time, you didn't know how
22 old A.P. was, did you?
23 A. How old A.P. was?
24 Q. Right.
25 A. It didn't even come into my brain. I'm not

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1 think "it's okay, if this girl is willing to drink, maybe
2 she is willing to do something else," going through your
3 head?
4 A. No, absolutely not.
5 Q. You didn't ask her how old she was?
6 A. Not a doubt in my brain. Absolutely not.
7 Q. You never asked her how old she was?
8 A. Absolutely not. I had zero conversation with
9 that girl.
10 Q. Didn't you ask her to spread her legs?
11 A. I did not.
12 Q. Didn't you ask her to -- to use your mouth on
13 her?
14 A. No, sir. That is disgusting.
15 Q. Women are disgusting to you? Women are
16 disgusting to you?
17 A. No, I love women.
18 Q. Did you struggle at all getting up when A.H.
19 told you it was time to go?
20 A. Not that I recall.
21 Q. So you struggled getting down the stairs,
22 but you had no problem getting back up them?
23 A. I tripped. I fell down the stairs. I
24 wouldn't say I struggled. I straight bombed that down
25 those stairs.

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1 sure what you are asking.
2 Q. You didn't know how old A.P. was when you were
3 sitting on the couch next to her?
4 A. I didn't know anything about that girl. How
5 would I possibly know how old she was?
6 Q. That's what I'm asking. You didn't know. So
7 that's a "yes," then?
8 A. Yes, I did not know.
9 Q. She is a fully developed girl at that point in
10 time, A.P. was?
11 A. You are going to have to ask A.P. that.
12 Q. She didn't have breasts that you could see?
13 A. I wasn't paying attention, sir.
14 Q. You didn't try and touch those breasts?
15 A. Absolutely not.
16 Q. You started first with her stomach, started
17 touching her stomach; isn't that true?
18 A. Absolutely not.
19 Q. Started to touch her breasts; didn't you do
20 that?
21 A. No, I did not.
22 Q. Did you put her hand down your -- put your
23 hand down her pants; didn't you do that?
24 A. No, I did not.
25 Q. You didn't have some of the alcohol making you

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1 Q. And the next morning when you took them home,
2 you made this comment, "Sorry for being a drunken idiot"?
3 You did make that comment?
4 A. I did with everybody that was in the car.
5 Q. Everybody was in the car at that time?
6 A. Let's say, I had -- well, at the very first we
7 had A.M., Mazy, Cassidy, and A.P., I believe.
8 Q. And so all of those people were in the car
9 when you made that comment?
10 A. I don't remember if it was before or after I
11 dropped off people.
12 Q. You don't think it was fair -- is it possible
13 it was after you dropped off A.M.?
14 A. It's very possible.
15 Q. When you left the couch and went upstairs, you
16 didn't take the rum bottle with you then is what you are
17 saying?
18 A. I don't recall taking -- taking the rum bottle
19 the second time.
20 Q. When you did wake up on that couch, do you
21 remember what position you were in when A.H. woke you up?
22 A. I recall my feet up on the coffee table, and
23 that's about it.
24 Q. Weren't you leaning against A.P.
25 A. I don't recall that.

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1 Q. You just don't recall anything; is that what
2 you're telling me?
3 A. I -- I recall highlights, you bet.
4 Q. I'm sorry, I asked a bad question there.
5 When you say you don't recall, you have a
6 memory of your feet being on the coffee table. Do you have
7 any memory of where the rest of your body was?
8 A. No. I would assume my hands were right there
9 on my lap or right in front of me. Assuming.
10 Q. You're assuming. You don't know, though?
11 A. No, I don't.
12 Q. So other than you taking the alcohol, was that
13 the only downer that you can think of in the party or the
14 hang-out that was going on?
15 A. As far as a downer?
16 Q. Yeah.
17 A. Can you define that?
18 Q. Something disappointing or -- there wasn't any
19 fights amongst the kids or anything like that, as far as
20 you know?
21 A. No, no fights. No altercations.
22 Disintegrating the food and the alcohol confiscation.
23 MR. THOMPSON: I don't have anything else, Judge.
24 THE COURT: Redirect.
25 MR. WOODBURY: No further questions.

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1 be done, as I told you at the beginning of the trial,
2 without the jury here. Those are settled on the record
3 without the jury here.
4 Again, please do not converse amongst yourselves
5 or with anyone else on any subject connected with the
6 trial. Do not read, watch or listen to any report or
7 commentary on the trial or any person connected with the
8 trial by any medium of information, including, without
9 limitation, newspapers, television, radio or the Internet.
10 And do not form or express any opinion on any
11 subject connected with the trial until the cause is finally
12 submitted to you all for deliberation.
13 In addition, You may not use any electronic
14 device or media, such as the telephone, a cell phone,
15 smartphone, iPhone, Galaxy, or computer, the internet, any
16 internet service, any text or instant messaging service,
17 any internet chat room, blog, or website such as Facebook,
18 Instagram, LinkedIn, YouTube or Twitter, to communicate to
19 anyone any information about this case until I accept your
20 verdict.
21 In other words, do not talk to anyone on the
22 phone, correspond with anyone, or electronically
23 communicate with anyone about this case.
24 In addition, remember, jurors cannot conduct any
25 form of independent research or investigations or

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1 THE COURT: Any jury questions?
2 All right. I will give the jury just a few
3 moments to think about that.
4 Were there going to be any further witnesses for
5 the defense?
6 MR. WOODBURY: There will be no more witnesses.
7 THE COURT: Defense is resting its case?
8 MR. WOODBURY: Yes.
9 THE COURT: Any jury questions?
10 It appears not.
11 Okay. Please step down, sir. Thank you.
12 We'll have you take a seat next to your attorney.
13 All right. Since the defense has now -- defense
14 rested its case, right?
15 MR. WOODBURY: It has.
16 THE COURT: Any rebuttal?
17 MR. THOMPSON: No.
18 THE COURT: Then the evidentiary portion of the
19 trial is now concluded, ladies and gentlemen.
20 The Court has been working on jury instructions.
21 We need to get all those together. I'm going to have you
22 come back to the jury room. I'm going to make it at 3:30
23 p.m.. We are going to press on, try to get this case to
24 the jury here today.
25 All right. So you can take a break. This has to

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1 experiments prior to during the jury deliberations
2 This means you cannot do research such as
3 consulting dictionaries, using the internet or using
4 reference materials looking into the legal and factual
5 issues in this case.
6 You cannot make any investigations, test theories
7 of the case, recreate aspects of the case or in any other
8 way investigate or try to learn about the case on your own.
9 So keep all these rules in mind. We're almost to
10 the point where we'll read jury instructions to you and the
11 lawyers get to make their closing arguments. Then you get
12 to go deliberate the case, okay.
13 No talking about the case still.
14 (Recess taken at 2:25 p.m.)
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth
5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
7 present in court during all the proceedings had in the
8 matter of the State of Nevada, plaintiff, versus
9 KEVIN JOHN MENTABERRY, defendant, heard at Elko, Nevada, on
10 January 24, 2020, and took verbatim stenotype notes
11 thereof; and that the foregoing 199 pages contain a full,
12 true and correct transcription of my stenotype notes so
13 taken, and a full, true and correct copy of all proceedings
14 had.

15
16 

17 LISA M. MANLEY - CCR No. 271

18 OFFICIAL COURT REPORTER
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CASE NO. CR-PP-18-5030

DEPT. 2

FILED IN OPEN COURT

Date 01/27/20

Time 2:22 PM

Clerk: [Signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

VERDICT

KEVIN JOHN MENTABERRY,

Defendant,

We, the Jury, find Defendant Kevin John Mentaberry (CHECK ONLY ONE):

- ☐ Guilty of Count 1: Sexual Assault on a Child Under the Age of 16 Years
- ☐ Guilty of Count 2: Statutory Sexual Seduction
- ☒ Guilty of Count 3: Lewdness With a 14 or 15 Year Old Child
- ☐ Not Guilty

DATED this 27 day of January, 2020.

[Signature]
FOREPERSON