

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO RENTERIA-NOVOA,

Appellant,

vs.

RENEE BAKER, WARDEN,
Lovelock Correctional Center

Supreme Court Case No. 84656

District Court Case No. C268285-1

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**APPELLANT'S APPENDIX
Volume IV**

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1 Q Okay. What did he do with his hands when he was
2 touching your boobs?

3 A Well, he like put them -- touched my boobs --

4 Q Okay.

5 A -- all around.

6 Q For the record, you're kind of moving your hand
7 in a circular motion. So he would move his hand around?

8 A Uh-huh.

9 Q Is that a "yes?"

10 A Yes.

11 Q And what other parts of your body would he touch
12 with his hands?

13 A My vagina.

14 Q And what did he do with his hands when he
15 touched your vagina?

16 A Put his fingers inside.

17 Q Would he keep his finger -- or I guess did he on
18 this first time, did he keep his finger still, did he move it
19 around, or something else?

20 A He moved it around.

21 Q Did any other part of his body touch you that
22 day?

23 A Yes.

24 Q And what was that?

25 A His mouth.

1 Q Where did he put his mouth?

2 A On my vagina.

3 Q You said that you were laying down. How is it
4 -- I mean, you had clothes on, I assume, when you went into
5 the room?

6 A Yes.

7 Q How is it that your clothes came off, or did
8 they?

9 A He would tell me to pull -- put my shorts down.

10 Q Okay. And then would you take them down or
11 would he?

12 A Well, I would and then like he would put his
13 hand and try to pull it down too.

14 Q So when he put his mouth on your vagina, how
15 were you positioned?

16 A In -- I was in my back.

17 Q And then what would he do with his mouth?

18 A Put it in my vagina.

19 Q Okay. What part of his mouth would go in your
20 vagina?

21 A His tongue.

22 Q So when you say "in," you know, obviously,
23 there's the two lips of your vagina, right? Would it go
24 inside of those lips?

25 A Yes.

1 Q And then beneath you, the whole in your vagina,
2 would it go inside there?

3 A The --

4 Q The whole underneath, would his tongue penetrate
5 that part of your vagina?

6 A Yes.

7 Q Okay. After he would use his mouth on your
8 vagina, would -- or that first day, did he do -- did he touch
9 you anywhere else?

10 A Well, my boobs and my butt.

11 Q Okay. What part of his body touched your butt
12 that first day?

13 A What part of his --

14 Q What part of his body --

15 A His tongue.

16 Q His tongue. How is it, then, that his tongue
17 would come to touch your butt?

18 A He would turn me around.

19 Q So you were laying on your back and he would
20 turn you around. What was your position such that he would be
21 able to get behind you?

22 A What was his position?

23 Q What was yours?

24 A Oh. Like in my -- he would put me on my knees
25 and my hands.

1 Q Okay. And then you say he would put his mouth
2 onto your -- onto your bottom, right?

3 A Uh-huh.

4 Q And is that on the outside or on the inside?

5 A On the outside.

6 Q Okay. What would he do with his tongue?

7 A He would move it around.

8 Q So the whole of your anus, would his tongue go
9 inside, stay on the outside, or something else?

10 A It -- sometimes it would go -- it would go
11 inside --

12 Q Okay.

13 A -- and move it around.

14 Q That first time, did it go inside when he would
15 move it around?

16 A Yes.

17 Q All right. How long would he use his tongue to
18 penetrate your anus?

19 A How long? Like around 5, 10 minutes.

20 Q Okay. So you've described the first time that
21 something happened and that was at the University Apartments.
22 Did that continue to happen?

23 A Yes.

24 Q How often when you were at University Park
25 Apartments, did that same kind of sexual conduct happen?

1 A When there was no one around at the house.

2 Q Okay. Like, you know, there's four weeks in a
3 month. How often are you thinking -- and of course, I know
4 it's -- it was repeated and I know that it's hard to say how
5 often, but on average, how often was he touching you?

6 A Like two, three times a week.

7 Q Okay. At some point, the defendant adds
8 something -- adds a couple things to what he normally does to
9 you. So do you remember another time that he did all of the
10 things you just described but then did something else?

11 A He would lick my boobs.

12 Q Lick your boobs?

13 A Yes.

14 Q All right. Let's talk about another time that
15 the -- another time that you remember specifically that the
16 defendant touched you in this way. Tell us another time that
17 stands out in your mind of something that the defendant did.

18 A In his room, it was like all the times it was
19 inside his room.

20 Q And was it always after school?

21 A Yes, when I was home, when I got home from
22 school.

23 Q Okay. Is there another time that you remember
24 him saying a specific threat that made you come into his room?

25 A He would -- he would tell me that he was going

1 to tell my mom that he saw me with my cousin. He was going to
2 tell my mom that we had sexual relationships.

3 Q Okay. So specifically another time tell us
4 exactly what the defendant would do to you?

5 A He would lick my vagina, lick my anus, and he
6 would lick my boobs as well.

7 Q Okay.

8 A Touch and put his fingers inside my vagina.

9 Q Did he ever put his fingers anywhere else?

10 A In -- yes.

11 Q Where?

12 A My anus.

13 Q Okay. So at some point, he adds that sexual act
14 where he inserts his fingers in your anus; is that right?

15 A Yes.

16 Q And how many fingers would he put inside of you?

17 A Two.

18 Q The time that he added the fingers in your anus,
19 would he keep his fingers still, would he move them around, or
20 something else?

21 A Move -- move it around.

22 Q You described that he would touch your breasts
23 and kiss your breasts, put his fingers inside your vagina and
24 your anus and lick your vagina. Did he always lick your
25 vagina first and then end with licking your anus?

1 A Yes.

2 Q And was it always the same, that he would put
3 you on all fours and penetrate your anus with his tongue?

4 A Yes.

5 Q Okay. And that other instant, the -- you know,
6 one of the other times that we're talking about, that's the
7 way that that happened also?

8 A Yes.

9 Q While you were at the University Park
10 Apartments, did you -- did there come a point in time that you
11 saw the defendant's penis?

12 A In University?

13 Q At University?

14 A No. Like he would touch his penis with his
15 hand.

16 Q Okay. And was that at --

17 A Over the clothes.

18 Q What's that?

19 A Over his clothes.

20 Q Oh, over his clothes?

21 A Yes.

22 Q Okay. So did there come a point where you saw
23 him touch his penis outside his clothes?

24 A Yes.

25 Q Where was that?

1 A At the University.

2 Q Okay. So let's talk about that. Tell us the
3 first time that you saw the defendant touching his own penis.

4 A Well, I was in his room and I was laying down
5 and he would touch -- touch my vagina with one hand and he
6 would touch his penis with the other.

7 Q Okay. So he would be touching your vagina with
8 what, with his fingers?

9 A Yes, with his hand.

10 Q And his own penis with his other?

11 A Yes.

12 Q And what would he -- what would his hand be
13 doing to his penis?

14 A He moved it around.

15 Q Ultimately, would something come out of his
16 penis or no?

17 A No.

18 Q Never?

19 A No, it was just like on top -- like he had his
20 pants on.

21 Q Okay.

22 A He would just touch it over it.

23 Q Okay. All right. So there were times, then,
24 that he would touch his penis over his pants. I think you
25 just said that there were times, also, that he would touch his

1 penis actually touching the skin?

2 A Yes.

3 Q Is that true?

4 A Yes.

5 Q Okay. And where was it that that happened?

6 A When we moved to other apartments.

7 Q Okay. Once you moved to Andover?

8 A Yes.

9 Q All right. So we'll get there in a second.

10 You've described him licking your vagina and anus, and I
11 understand that that was underneath your clothes. Him licking
12 your breasts, was that, also, obviously, underneath your
13 clothes?

14 A Yes.

15 Q And so his mouth, his tongue would touch your
16 bare naked breast?

17 A Yes.

18 Q Okay. So at some point, then, do you move from
19 the three-bedroom University to a new apartment?

20 A Yes.

21 Q And what was the apartment you lived at after
22 University?

23 A They were called Andover Place.

24 Q When did you move there?

25 A In the year of 2006.

1 Q And you lived there until when?

2 A 2007.

3 Q Now, so in 2006, you will be 13 and would have
4 turned 14 within that year?

5 A 13, yes.

6 Q And were you still going to Orr Middle School?

7 A Yes.

8 Q All right. Who moved into Andover Place with
9 you?

10 A My mom and my sister and me.

11 Q How big was Andover Place Apartment?

12 A It was one-bedroom apartment.

13 Q Did the defendant move into Andover Place?

14 A He moved after we moved.

15 Q Why didn't he move in originally?

16 A Because he had broken up with my mom and so we
17 moved just the three of us by ourself.

18 Q Okay. When you moved without the defendant, did
19 you still see him?

20 A He would go to the house.

21 Q Why?

22 A To -- probably to visit or to see my mom.

23 Q Okay. Would he -- you know, did -- would he
24 show up at times when your mom wasn't home?

25 A Yes.

1 Q And at that point in time, were he and your mom
2 dating at all?

3 A They were not dating, but he -- he would go and
4 look for her and go to the house.

5 Q When you first moved into Andover at 13, before
6 the defendant moves in and he's visiting, does the same kind
7 of stuff that happened at University start happening at
8 Andover?

9 A Yes.

10 Q Before the defendant moves in, tell us a time
11 that something happened with the defendant.

12 A He was in the room. There was only one bedroom.

13 Q And where was your mom?

14 A She would be working.

15 Q And what would he do?

16 A He would go to the house and he would do what --
17 the stuff that he would do at University.

18 Q Okay. So tell us one specific time that you
19 remember that happening.

20 A He went one time to -- to the house and he --
21 well, he made me go into the room and he would start touching
22 me.

23 Q How is it that he would make you go into the
24 bedroom?

25 A Well, he just pushed me around and like touched

1 my butt while I was walking around.

2 Q Would the same kinds of threats continue while
3 you were at Andover?

4 A Yes.

5 Q And that was always about your cousin?

6 A Yes.

7 Q So the day, then, that -- the specific day that
8 we're talking about, he gets you into the bedroom. Do you
9 remember what you were wearing that day?

10 A Shorts and like a T-shirt.

11 Q What time of day did this happen?

12 A Like afternoon, daytime.

13 Q Did it usually happen in the afternoon?

14 A Yes.

15 Q While you were at Andover while you're telling
16 us about one specific time, was it repeated like it was at
17 University?

18 A Yes.

19 Q So on the specific time that you're talking
20 about, you said you were wearing shorts and a T-shirt and you
21 go into his -- into the one room. In that room, did you have
22 a bed?

23 A Yes.

24 Q And who slept in that room while you were living
25 there?

1 A My mom and then my sister.

2 Q So when Perla was there, it would be the three
3 of you in the bed?

4 A Yes.

5 Q So the time that you're talking about before he
6 moves in, tell us what happened.

7 A He would make me put my shorts down and he would
8 start to lick my vagina.

9 Q And what would he do with his mouth?

10 A He would put it --

11 Q Or his tongue?

12 A He would lick my vagina, put it inside.

13 Q Okay. What other parts of his body touched what
14 parts of your body?

15 A My hands, he would touch my boobs.

16 Q Okay, your boobs. Any other part?

17 A My vagina.

18 Q And what would he do with his hands?

19 A He'd put his fingers inside.

20 Q That day that you're referring to, did he keep
21 his hands still or did he move them around or something else?

22 A He moved it around.

23 Q Did he put his fingers anywhere else?

24 A In my anus.

25 Q What would he do with his fingers?

1 A Move it around.

2 Q And did he put his mouth anywhere else?

3 A Yes.

4 Q And where was that?

5 A Anus.

6 Q And how was it that that happened?

7 A He would turn me around.

8 Q Okay. That day, do you remember about how long
9 he would do that to you?

10 A 10, 15 minutes.

11 Q And that specific day that you're -- that you're
12 talking about, did his tongue actually penetrate or go inside
13 of your anus?

14 A Yes.

15 Q Okay. At some point, does Perla move out of
16 Andover?

17 A Yes.

18 Q And where does she go?

19 A She went to live with -- with her boyfriend.

20 Q And does anybody move in?

21 A My cousin Maritza moved in for a while.

22 Q Anybody else?

23 A No -- well, he moved in as well.

24 Q Okay. So at some point at Andover, and again,
25 you're living there from 2006 to 2007, at some point the

1 defendant moves in?

2 A Yes.

3 Q And you said it was one bedroom, so when he was
4 living there, what was the sleeping arrangement?

5 A Well, at first, like my mom, sometimes she would
6 go to sleep in -- in the living room and then sometimes he
7 would stay in the -- in the bedroom.

8 Q And is that with you?

9 A Yes.

10 Q Tell us a time that you remember at nighttime
11 him doing something to you.

12 A I was sleeping, I was in the bed with my mom,
13 and then he went to sleep in the same bed and I was on one
14 side of the bed. He was in the middle. My mom was on the
15 other side, and then he would try to touch me. He touched my
16 butt and then go inside my clothing and try to touch my
17 vagina.

18 Q Okay. When you say he would touch your butt, on
19 the times that your mom would be in bed, what would he be
20 doing to your butt?

21 A He would rub it on top of my clothes.

22 Q All right. Were there times that your -- that
23 you were then in that three-bedroom at nighttime that he would
24 do all of the things that he had been doing at University and
25 Andover, would he also do those at nighttime?

1 A When my mom -- when we were all in the room?

2 Q Right.

3 A No. When my mom, she was sleeping with us, he
4 would just touch me with his hands.

5 Q Okay. In the rubbing way you just talked about?

6 A Yes.

7 Q So while you were at Andover, after he moved in,
8 do you remember a time that he touched you in all the same
9 ways we've just talked about?

10 A Yes.

11 Q Was there ever a time that it was not after
12 school?

13 A Like on the weekends, if he was there and no one
14 was at the house.

15 Q Tell us a time you remember him touching you on
16 a weekend.

17 A It was during the daytime.

18 Q Okay. And tell us what happened.

19 A In the room he would lick -- lick my vagina.

20 Q Okay. What else?

21 A My anus, he would touch my boobs, put his
22 fingers inside of my vagina.

23 Q Okay. Would he put his fingers anywhere else?

24 A In my anus.

25 Q That time when you say that he now the specific

1 time on the weekend that he licked your anus, did his tongue
2 penetrate your anus?

3 A Yes.

4 Q Did it end up the same, with you on your hands
5 and knees?

6 A Yes.

7 Q Did it always end up with you on your hands and
8 knees?

9 A Yeah, basically all the time.

10 Q Then did there come a time at Andover when he
11 would ask you or make you start to touch his penis?

12 A Yes.

13 Q And how did that happen?

14 A He would tell me to put my hands on his penis.

15 Q And would you?

16 A Well, I'd tell him -- I'd tell him no at first,
17 and then he will like try to grab my hand and put it on -- on
18 his penis.

19 Q Was that on the inside of his clothes or outside
20 or something different?

21 A At first, outside his clothes.

22 Q Okay. And then what?

23 A And then like he would get it out and tell me to
24 start touching it.

25 Q Okay. How is it that your hand would touch his

1 penis?

2 A Well, he would tell me and then he'd try to put
3 my hand on his penis.

4 Q When that happened, would he keep your hand
5 still, move it around, or something else?

6 A Move it around.

7 Q Did the defendant ever ejaculate from you having
8 your hand on his penis?

9 A Well, like he would tell me to move it around
10 and then he would do it his -- do it himself.

11 Q Okay. Once he started doing it himself, then
12 would he ejaculate?

13 A Yes.

14 Q Where?

15 A He would like throw it on the ground.

16 Q Okay. At some point when you're living in
17 Andover, while specifically August 30th, then, of 2007, do you
18 have a birthday?

19 A In August --

20 Q August 30th, 2007, do you have a birthday?

21 A Yes.

22 Q And which birthday was that?

23 A I was 14.

24 Q All right. Once you turned 14, were the three
25 of you still living at Andover?

1 A In 2007, we moved to -- we were -- we were in
2 Andover. Then we moved to -- to Tamarus Park.

3 Q All right. And you moved to Tamarus at the end
4 of 2007, right?

5 A Yes.

6 Q So between your birthday, your 14th birthday, in
7 August of 2007, and the end of 2007, once you moved to
8 Tamarus, for those few months you're still at Andover, right?

9 A Yes.

10 Q And now, you're 14 years old?

11 A Yes.

12 Q Tell us a time that you remember this happening
13 once you've turned 14 and you're still at Andover?

14 A In the room.

15 Q Okay. I know it sounds repetitive, but -- I
16 mean, it was repetitive, but tell us a time, specifically,
17 after you've turned 14, that the defendant is touching you in
18 this way.

19 A In the room he would do the same thing.

20 Q After school?

21 A Yeah, when -- in the afternoon.

22 Q Okay. And what kinds of things would he say to
23 make you go into the room?

24 A Well, he was always threatening me that he was
25 going to go tell my mom.

1 Q Up until this point, did you ever want him
2 touching you in this way at all?

3 A No.

4 Q If he hadn't been threatening you with what had
5 happened with Yahir, would you have ever engaged in this kind
6 of activity with him?

7 A No.

8 Q Okay. So after you've turned 14, you say the
9 same type of thing happened. So let's talk about a day that
10 you came home from school and the defendant made you touch him
11 -- or I'm sorry. The defendant touched you?

12 A He was always in the room.

13 Q And at Andover, it was just that one bedroom?

14 A Yes.

15 Q Okay. So what would he do?

16 A He would touch me with his hands and with his
17 mouth.

18 Q Okay. How would he get your clothes off?

19 A He would tell me to put my shorts down or he
20 would like try to pull them down.

21 Q What parts of his body touched your body?

22 A His hand, his mouth.

23 Q Where would his hands go?

24 A In my vagina.

25 Q And where else?

1 A Anus and --

2 Q Okay.

3 A -- he would touch my boobs.

4 Q And what would he do with his mouth?

5 A He would lick my vagina and my anus. He would
6 lick my boobs as well.

7 Q When he licked your anus, would his tongue go
8 inside your anus?

9 A Yes.

10 Q Okay. And specifically that time at Andover,
11 after you're 14 years old, that's what happened?

12 A Yes.

13 Q All right. At some point at Andover, does he
14 ask you to do something else to his penis?

15 A To lick his penis.

16 Q And how did that happen?

17 A Well, I didn't do it. Like he would want me to.

18 Q Okay.

19 A I said no.

20 Q And he -- and you never ended up putting your
21 mouth on his penis?

22 A No.

23 Q Okay. So now, we talked earlier about 2007 and
24 at the end of that year, you moved to Tamarus Park. You were
25 14 years old.

1 A Yes.

2 Q Did you also in the fall of 2007 start high
3 school?

4 A Yes.

5 Q And where was that?

6 A I went to Del Sol High School.

7 Q Once you moved to Tamarus, who did you move
8 with?

9 A My mom and my cousin Maritza.

10 Q And where was the defendant?

11 A He had moved out.

12 Q Pardon me?

13 A He had move -- moved out.

14 Q So had he and your mom broken up again?

15 A Yes.

16 Q Once you got to Tamarus, what was the
17 relationship between you and the defendant?

18 A Well, there we didn't talk as much. He would go
19 sometimes, but my mom, she was there at home or my cousin.

20 Q And why was your mom home more once you were at
21 Tamarus?

22 A She worked in the morning and she was there in
23 the afternoon.

24 Q Okay. So once you got home, then --

25 A I was with my mom.

1 Q Okay. Did you also have another birthday in
2 2008?

3 A Yes.

4 Q And which birthday was that?

5 A My 15th birthday.

6 Q And is that -- was that kind of a special
7 birthday?

8 A Yeah.

9 Q Why?

10 A Well, like Hispanic tradition they have 15th
11 birthday called Quinceanera, and they do like a big party.

12 Q Okay. And what is that? What's the kind of
13 meaning of the Quinceanera?

14 A You like turn from a child, you turn into a
15 woman when you turn 15.

16 Q Okay. Was the defendant involved in your life
17 at all during this part of the year, during -- around your
18 15th birthday?

19 A Yeah, sometime he will go visit the house.

20 Q He would come to you to visit?

21 A Well, my mom, supposedly.

22 Q Okay. Did he ever touch you while you were at
23 Tamarus?

24 A No.

25 Q Did he continue to threaten you?

1 A Yes.

2 Q And how did that happen?

3 A He will call the house.

4 Q And what kinds of things would he say?

5 A That he was going to tell my mom and my family.

6 Q If you didn't do what?

7 A If I didn't let him touch me.

8 Q So then would he try to come over but someone

9 would be there?

10 A Yes.

11 Q Okay. Then at some point in 2009, do you move

12 again?

13 A In 2008.

14 Q I'm sorry, 2008?

15 A I moved to apartments called Southern Cove.

16 Q And were you now in the 10th grade when you

17 moved?

18 A Tenth grade.

19 Q Were you still going to Del Sol?

20 A Yes.

21 Q When you moved to the Southern Cove Apartments,

22 who did you move with?

23 A My mom and then one -- my mom's friend. It was

24 a two-bedroom apartment.

25 Q Did you have your own room there?

1 A With my mom, I share a room with my mom.

2 Q Okay. And then the friend had the other room?

3 A Yeah.

4 Q Once you get to Southern Cove Apartments, do you
5 start seeing the defendant again?

6 A Yes.

7 Q How did that happen?

8 A He would go and visit.

9 Q He would come to the apartment to visit?

10 A Yes.

11 Q And what would he do when he was there?

12 A Well, at first, when my mom was there, he would
13 just stay there and talk to my mom. And then other days, when
14 I was at school, he would call my house after -- after -- when
15 he knew I was -- I was at home or he would call my cell phone
16 or text me.

17 Q So at some point, you got a cell phone?

18 A Yes.

19 Q And when did you get a cell phone?

20 A When I was in Southern Cove.

21 Q Okay. So once you get to Southern Cove, you
22 have your own telephone?

23 A Yes.

24 Q Do you remember what the phone number was?

25 A I don't remember the number.

1 Q Okay. I'll get -- I'll come back to your phone
2 number then.

3 He starts calling you, then, on your cell phone. Is
4 he also calling your home number?

5 A Yes.

6 Q And saying the same kinds of things?

7 A Yes.

8 Q Did your cell phone that you had just gotten
9 receive and send text messages?

10 A Yes.

11 Q And did you ever receive or send text messages
12 with the defendant?

13 A He would text me when -- like I was walking home
14 from school, he would text me and tell me if I was home
15 already.

16 Q Okay. So what kinds of things was he saying
17 through these text messages?

18 A If I was home already or if -- if I was ready,
19 and he would tell me that he was going to go over the house.

20 Q Okay. Did there come a time when you were
21 living at Southern Cove when you were 15, that you had an
22 opportunity to see Yahir again?

23 A In Southern Cove? Well, I would see him like
24 when there was like parties or the family stuff.

25 Q And then in 2008, was there a party that you

1 went to with your family where you saw Yahir?

2 A Yes.

3 Q And tell us about that.

4 A It was his daughter's birthday and they did a
5 party for her.

6 Q Who is "they"?

7 A Yahir and his wife.

8 Q So Yahir through the years went on to get
9 married?

10 A Yes.

11 Q And what's his wife's name?

12 A Ameda Leese [phonetic].

13 Q What's -- we know Yahir's father is Uncle
14 Manuel. What's his mom's name?

15 A Rosa.

16 Q Pardon me?

17 A Rosa.

18 Q All right. Wait. Did you say -- that's his
19 mom's name too?

20 A Yahir's mom's name, yeah.

21 Q All right. So you went to the birthday. Do you
22 remember what year, what birthday celebration it was for
23 Yahir's daughter?

24 A It was her first birthday.

25 Q And who all was at that birthday?

1 A My family, my aunt, my mom. He went as well.

2 Q Would you say that at this point in time you had
3 kind of a large extended family here?

4 A Yes.

5 Q Lots of cousins and aunts and uncles?

6 A Yes.

7 Q And was everybody there for the celebration?

8 A Yes.

9 Q Was the defendant there?

10 A Yes.

11 Q How was it that the defendant became part of
12 that celebration?

13 A Well, my family knew him.

14 Q The aunts and uncles and everyone?

15 A Yes.

16 Q While you were at that birthday party, who were
17 you hanging around with?

18 A I was sitting with my mom and one of my aunts
19 that came from California.

20 Q And how did you feel about the fact that the
21 defendant was at this celebration?

22 A Well, that day he -- when he got there, he went
23 to sit next to me and since like I wasn't really answering the
24 phone those days, or sometimes I would or sometimes I
25 wouldn't, like he went there and he told me like why wasn't I

1 answering the phone or -- and I was like, 'cause I didn't want
2 to. And then he told me if I wanted him to tell my whole
3 family right there at that moment in the party that I was
4 having sexual relationship with my -- with my cousin.

5 Q Okay. Where were you when he talked to you
6 about this?

7 A I was sitting down --

8 Q And --

9 A -- in the table and my mom was talking to my
10 aunt.

11 Q Okay. But was your mom close to you?

12 A Yes.

13 Q How did that make you feel when he said that to
14 you at that party?

15 A It made me feel bad and embarrassed and scared.

16 Q Okay. What did you do after he said that to
17 you?

18 A Nothing. I was just sitting down. I was scared
19 and I thought he was going to go tell my family.

20 Q And throughout the years, were you pretty much
21 always scared that he was going to tell your family?

22 A Yes.

23 Q After that party, does there come a time where
24 now he has started calling you and texting you, does he also
25 start showing up places?

1 A Yes.

2 Q Tell us about those kinds of places that he
3 would show up.

4 A One time in the morning, I was walking to the
5 bus stop and he was driving his truck and he told me to get in
6 his car, and I was walking to the bus stop and I was like, no,
7 and then I told him that I could walk to the bus stop. And
8 then I kept walking, I ignore him, and then he just went off.
9 And then one time after school, I got on the bus stop and he
10 was waiting for me where the bus leaves us and he wanted me to
11 -- he told me that he was going to give me a ride, and -- and
12 I kept on walking and he was still there.

13 And then sometimes, he would go to the apartment and
14 he would be waiting for me 'cause he knew what time I got out
15 and what time I got home, so he would be parked outside the
16 apartment or he would be standing around close to the
17 apartment.

18 Q Okay. Any of these times, then, would he make
19 you go inside the apartment?

20 A Yes.

21 Q And tell us what would happen.

22 A He would go and touch me.

23 Q Okay. Tell us about one time you remember at
24 Tamarus that he started touching you again -- I'm sorry. At
25 Southern Cove, that he started touching you again.

1 A Like he would, in the room that my mom and I
2 shared, in the bed he would touch me with his hands and his
3 mouth, his tongue.

4 Q Okay. And was there an actual bed in that room?

5 A Yes.

6 Q So once you got into the bedroom, would he put
7 you on the bed or on the floor or something else?

8 A On the bed.

9 Q Okay. And the specific time that we're talking
10 about, you said that he touched you with his mouth. Where
11 would he put his mouth?

12 A On my vagina.

13 Q And what would he do with his mouth?

14 A Move it around, lick -- lick my vagina.

15 Q Okay. With what part of his mouth?

16 A His tongue.

17 Q And that would go inside you?

18 A Yes.

19 Q Okay. How about his mouth touching any other
20 part of your body?

21 A My anus.

22 Q And what would he do?

23 A He would lick it.

24 Q And would his tongue actually penetrate your
25 anus -- or this day, did his tongue actually penetrate your

1 anus or just lick it on the outside?

2 A Yes, he would put it inside.

3 Q You also said he touched you with his hands that
4 day. What did he do with his hands?

5 A He put his fingers inside of my vagina and my
6 anus, and then he would touch my boobs.

7 Q Okay. During this time, after you've moved into
8 Southern Cove, after the threats start again, did you want any
9 of that to happen that you just described?

10 A No.

11 Q If he wasn't threatening you and harassing you,
12 would you ever have engaged in that kind of activity with him?

13 A No.

14 Q Did there come a point -- or was there a time at
15 Southern Cove, again, where he had you touch his penis?

16 A Yes.

17 Q And how did that happen?

18 A He would tell me to touch his penis or put --
19 try to put my hand on the top of his penis.

20 Q Okay. Was that the same day that we're just
21 talking about where he brought you in when he was waiting
22 outside or a different day?

23 A Different day.

24 Q Did he do that as often as he did the other
25 things or not as often?

1 A Not as often.

2 Q And when you say he would have you touch his
3 penis, was that on the outside of his clothes or inside?

4 A At first, outside.

5 Q And then what?

6 A Then he would want me to touch it inside.

7 Q And would you?

8 A Well, he would try like to put my hand on his
9 penis.

10 Q Would your hand stay still, move around, or
11 something else?

12 A Move around.

13 Q Okay. Eventually, would he then take his own
14 penis?

15 A Yes.

16 Q And what would he do?

17 A He would move it around.

18 Q Okay. Would he always ejaculate or sometimes?

19 A Well, when he would like get his penis out, he
20 would ejaculate.

21 Q Okay. You're kind of moving your hand around,
22 so is that what he was doing, like moving it up and down on
23 his --

24 A Yes.

25 Q -- penis? Is that a "yes"?

1 A Yes.

2 Q All right. Then in 2009, August of 2009, you
3 finally have your 16th birthday, right?

4 A Yes.

5 Q Once you turn 16, do you move from Southern Cove
6 to another apartment?

7 A Yes.

8 Q And when is -- or where is that?

9 A It's Riverbend Village Apartments.

10 Q And that's in Las Vegas, right?

11 A Yes.

12 Q All of these apartment buildings that we've
13 talked about, are they all in Las Vegas?

14 A Yes.

15 Q Okay. All here in Clark County?

16 A Yes.

17 Q So once you turn 16, are you now, what, in the
18 11th grade at Del Sol?

19 A Yes.

20 Q And do you still see the defendant while you are
21 at Riverbend?

22 A Yes.

23 Q And how is it that you see him then?

24 A He would go to the house. He would like after
25 school, he would go to the apartment or he would wait for me

1 outside when -- or he -- he'd text me and tell me if I was
2 home already or if I was close to the house, that he was going
3 to go to the house. He -- he was going to be there in a
4 little bit.

5 Q Did the same kind of sexual acts occur between
6 -- or once you moved in after August of 2009?

7 A Yes.

8 Q Sorry, bad question. Once you move in, do the
9 same kind of sexual acts occur?

10 A Yes.

11 Q And how often do you think he's able to get you
12 into the house at Riverbend?

13 A Like twice a week.

14 Q Do you remember the last time that the defendant
15 touched you?

16 A Yes.

17 Q And when was that?

18 A It was in the room. I had my own room in that
19 apartment -- in those apartment. It was a two-bedroom, so my
20 mom had one room and I had the other one. So I went -- I was
21 in the room after school and he would tell me to put my shorts
22 down.

23 Q Were you -- you said that you were in the room.
24 Were there times, then, that the defendant would come over and
25 you would already be in your room?

1 A Well, that time -- that time he was waiting for
2 me outside that apartment --

3 Q Okay.

4 A -- door.

5 Q So the last time that you remember, you came
6 home and he was already there?

7 A Yeah, he was waiting for me outside.

8 Q What was he waiting in? Was he just standing
9 outside the apartment? How did he --

10 A Yeah, he was standing there and waiting for me
11 to get home so I can, you know, go in the house.

12 Q Did you know it was -- he came to the apartment
13 that day?

14 A How he came?

15 Q How was it that he would get to Riverbend?

16 A He would drive.

17 Q Okay. Would you see his car there?

18 A Yes.

19 Q So when you came home from school, he was
20 waiting?

21 A Yes.

22 Q Had you gotten any texts or calls from him that
23 day --

24 A Yes. He would text me and tell me -- or ask me
25 where was I or if I was close to the house, and he would tell

1 me that he was going to wait for me.

2 Q Do you remember what month of 2009 this was?

3 A Like August --

4 Q Okay. Well --

5 A -- September.

6 Q You moved in in August of --

7 A I moved in in August.

8 Q Okay. And then do you remember that you first
9 talked to the police in about December of --

10 A Yes.

11 Q -- 2009? Yes?

12 A (Witness nods head.)

13 Q So how long before you talked to the police was
14 the last time he touched you?

15 A It was in the month of November.

16 Q Okay. So November was the last time that the
17 defendant ever touched you?

18 A Yes.

19 Q So you said that you came home from school and
20 he was there, and what happened?

21 A He would -- I went in the house and he would
22 follow me around. I took my stuff to my room, my backpack,
23 and then like I would walk outside the room and like go to the
24 kitchen and he would like follow me around and try to touch my
25 butt.

1 Q Okay. And then what happened?

2 A And then he would tell me to go in the room.

3 Q Was he threatening you that day?

4 A Well, when -- at first, he didn't, and then when
5 he -- when I was in the bed, when he was touching me and I
6 like -- I would move away, like he told me that he was going
7 to go tell my family.

8 Q Okay.

9 A That if I didn't let him touch me, he was going
10 to go right now, like in that moment, and -- and go tell my --
11 my aunt and uncle and my mom what I -- what I had done with my
12 cousin.

13 Q Was he angry by this point in time?

14 A Yes.

15 Q Throughout the years, did he get like
16 increasingly more and more angry with you?

17 A Yes.

18 Q When you were younger, would he get angry?

19 A Not as much as like the last -- like the last
20 year he -- before I told the police.

21 Q Okay. So by 2000 -- by the -- by this fall, by
22 the time you're 16, he's getting more angry with you?

23 A Yes.

24 Q How would he act?

25 A He would get mad.

1 Q And what was he doing that showed you he was
2 mad?

3 A Like 'cause I would move around. Like I
4 wouldn't -- like I would love so he wouldn't touch me or lick
5 my vagina and stuff, so like he would tell me like, well, if
6 you don't stop, I'm going to -- I'm going to go tell right
7 now. If I don't -- and you don't -- if you don't stop moving,
8 I'm going to go tell -- I'm going to go right now and go tell
9 your uncle and your aunt.

10 Q Okay. Was he ever getting physically more
11 aggressive?

12 A Like he would like try to pull me back.

13 Q Okay. So you said, then, that day that you came
14 and he was outside, did he say anything to you that final day?
15 Like besides the threats, did he -- did he ask you anything or
16 say anything to you that you remember?

17 A Well, he just told me that if -- if -- that he
18 was going to go and tell my aunt and uncle.

19 Q But besides the threats, did he say anything to
20 you about what you were going to do or what was about to
21 happen with you two?

22 A Like what was going to happen?

23 Q Like did he ever say anything about you two
24 having, you know, sex or -- or not having sex, but being
25 intimate or having sexual relationships? Did he ever say, you

1 know, come on, let's go, anything like that?

2 A Yeah, like he would be touching me and putting
3 his finger inside my vagina, my anus.

4 Q Okay. So --

5 A He would basically do the same at other times.

6 Q Okay. That day, then, that you -- the final day
7 that we're talking about, do you remember when you came up to
8 him in the parking lot, him saying anything about what you
9 were about to go do?

10 A What -- well, he was there and I already knew
11 why was he there 'cause I know he wanted to go inside and
12 touch me. And then like there was nothing I could do.

13 Q Okay. So then once you got in that -- inside
14 that day, you said that he took you into the bedroom that you
15 had by yourself, right?

16 A Yes.

17 Q And what happened?

18 A He would touch me.

19 Q He did touch you that day?

20 A Yes.

21 Q Did you have a bed?

22 A Yes.

23 Q Did he put you on the floor or on the bed or
24 something else?

25 A In the bed.

1 Q Do you remember what you were wearing that final
2 day?

3 A My shorts.

4 Q And tell us what happened?

5 A He put them down and tell me to put them down
6 and he would put me on the bed and start to lick my vagina and
7 anus and touch me with his fingers.

8 Q Did his fingers touch your vagina?

9 A Yes.

10 Q And where did they go in your vagina?

11 A They went inside my vagina.

12 Q How about your anus?

13 A He put his fingers inside.

14 Q Okay. You said he used his mouth on your
15 vagina. What did he do with it?

16 A He put his tongue inside.

17 Q And you also said his mouth touched your anus.

18 A Yes.

19 Q How did that happen?

20 A He would turn me around and put me on my knees
21 and start to lick my anus.

22 Q Okay. And that final day that we're talking
23 about, did his tongue actually go inside your anus?

24 A Yes.

25 Q Okay. When you were at Riverbend now at 16, was

1 there a time, also, that he did the same that he did back at
2 Southern Cove, which was make you touch his penis with your
3 hand?

4 A Yes. He would tell me to touch it and like over
5 his clothes.

6 Q Okay. And then at some point, would you have to
7 touch the actual skin?

8 A Yes.

9 Q Did that happen the same way that it did that
10 you just described?

11 A Yes. Like he would get it out.

12 Q Okay. And all of the things at Riverbend, those
13 are all once you've turned 16, right?

14 A Yes.

15 Q Did you want to do any of the sexual things that
16 you did with the defendant at Riverbend?

17 A No.

18 Q And why did you?

19 A Because he would threaten me to go tell my mom,
20 my family.

21 Q Okay. Did there come a time, then, after the
22 final time he touched you, that you found out about the
23 defendant calling your cousin Maritza?

24 A Yes.

25 Q What happened?

1 A Well, I was at work and my -- my cousin, she
2 told me that she -- that she had forgot to tell me that he had
3 called her and he told her to let me know to call him if I
4 didn't want things to get worse.

5 Q Okay. So did Maritza at some point come and
6 talk to you?

7 A Yes. It was at work 'cause she told me -- when
8 she told me that, she saw that I was like scared, and then
9 like she started to ask me if he was threatening me or he --
10 if he was doing something to me and I told her yes, and so I
11 started to cry so she told me -- she told me that -- well, I
12 only told her that he was threatening me.

13 Q You only told her that he was you?

14 A Yes.

15 Q Where was it that you worked?

16 A I was working at a Subway.

17 Q Did -- is that where Maritza worked also?

18 A Yes.

19 Q In fact, did other people from your family also
20 work at Subway?

21 A Yes.

22 Q Who else?

23 A My mom.

24 Q When Maritza confronted you about this, where
25 did you say you were?

1 A At work.

2 Q When you started crying, were you actually at
3 work?

4 A Yes.

5 Q Were you actually on shift?

6 A Yes.

7 Q Okay. You said you just basically said he's
8 harassing me, but you didn't tell her anything else?

9 A Yes.

10 Q Why didn't you tell her anything else then?

11 A Because I was shy. I was scared. I didn't want
12 to tell her.

13 Q Up until Maritza talks to you about this, had
14 you ever told anyone what you had been going through for the
15 past four years with the defendant?

16 A No.

17 Q Is that the first conversation you had ever had?

18 A Yes.

19 Q What happens, then, after Maritza confronts you
20 about that phone call?

21 A He -- she went and told my aunt what was going
22 on.

23 Q And which aunt was that?

24 A Janet.

25 Q What happened then after Janet found out?

1 A She went to my house one time in the afternoon,
2 I was at home, and she went and she told me that Maritza had
3 told her what --

4 MR. FELICIANO: Judge, I'm going to object --

5 A -- what happened.

6 MR. FELICIANO: -- to hearsay.

7 THE COURT: Hang on.

8 MS. FLECK: It's not offered for the truth of the
9 matter, Judge. It's just effect on the listener and showing
10 the foundation of the progression of how the story comes out.
11 I won't ask her any details about what was said.

12 THE COURT: All right. Objection overruled.

13 BY MS. FLECK:

14 Q So basically, Janet tells you that she had had
15 the conversation with Maritza, right?

16 A Yes.

17 Q All right. Do you then tell Janet what happened
18 with the defendant?

19 A Yes.

20 Q And how much do you tell Aunt Janet?

21 A Well, I told her -- I told her she was touching
22 me and -- that he was touching me and that -- that he was
23 threatening me to tell my mom that I had sexual relationship
24 with my cousin.

25 Q Did you admit to Aunt Janet at that time that

1 anything had happened with Yahir?

2 A Yes.

3 Q Did you -- while you told Aunt Janet that the
4 defendant was touching you, did you describe to her the kinds
5 of things he would do?

6 A No.

7 Q And in fact, still today, have you ever
8 described the exact things that he's done to your Aunt Janet?

9 A To --

10 Q To Janet, have you ever told Janet --

11 A No, like the details, no.

12 Q Okay. So even today, years later, you still
13 have not described to Janet exactly what he did?

14 A No.

15 Q Okay. Had anyone told your mom yet?

16 A No.

17 Q How did you feel about your mom finding out?

18 A I was scared that she was going to know.

19 Q Okay.

20 A She was -- I was scared that she was going to
21 get mad.

22 Q All right. At some point, does Janet take you
23 to talk with someone?

24 A Yes.

25 Q And when was that?

1 A Well, she took me to see a counselor. That day
2 that she went, the next day she told her daughter to take me
3 to the counselor and call -- so they called, so the next day
4 they took me -- they took me to the counselor.

5 Q And which daughter of Janet's?

6 A Jeimi.

7 Q Jeimi, is that your cousin Jeimi?

8 A Yes.

9 Q So when Jeimi took you to the counselor, had you
10 ever --

11 MS. FLECK: Thank you.

12 THE WITNESS: Thank you.

13 BY MS. FLECK:

14 Q Had you ever met this counselor before?

15 A No.

16 Q Was it a man or a woman?

17 A It was a guy.

18 Q When you went in to talk to him, were you with
19 your Aunt Jeimi or alone?

20 A My cousin Jeimi.

21 Q I'm sorry. Your cousin Jeimi, was she with you?

22 A Yes.

23 Q Who actually went into the counseling session
24 with you?

25 A My cousin Jeimi.

1 Q And how come she went in with you?

2 A 'Cause she was the one that took me to the
3 counselor.

4 Q So when you spoke to the counselor about what
5 had happened, she was in there with you?

6 A Yes.

7 Q Did you tell the counselor everything that
8 you've just testified about today?

9 A No --

10 Q Why not?

11 A -- not the details. 'Cause my -- my cousin, she
12 was with me so I didn't want to -- I didn't want her to know
13 what he had done, like the details.

14 Q And in fact --

15 A I was shy she was there. And then the
16 counselor, it was a guy so I was kind of like shy to tell him
17 all the details.

18 Q In fact, even today, have you ever had a
19 detailed conversation with Jeimi about everything the
20 defendant did to you?

21 A No.

22 Q That day, then, that you see the counselor does
23 your cousin Jeimi ultimately call the police?

24 A That was not that day. That was after I went to
25 the counselor, my -- my aunt, she went to talk to my mom and

1 told he what was going on.

2 Q Okay. So that's right. So you see the
3 counselor and then Aunt Janet goes and talks to your mom?

4 A Yes.

5 Q How did your mom react?

6 A She was -- she was like -- she didn't -- she was
7 like yelling and screaming, like she was like -- she was like
8 madder that why didn't my aunt tell her first what was going
9 on.

10 Q Okay. Was her yelling and screaming, was that
11 -- was that ever any anger directed at you?

12 A No.

13 Q So when you say she was yelling and screaming,
14 was that about the situation?

15 A Yeah, 'cause she -- she's wanted -- she was mad
16 at like that they took me to the counselor first and then
17 after that, she -- my aunt told her what was going on.

18 Q Okay. So all of the years that you had spent
19 worrying that your mom was mad, did she ever get mad at you?

20 A No. She was just like mad at like my aunt, that
21 she didn't tell her as soon --

22 Q As she found out?

23 A Uh-huh.

24 Q Okay. So then once your mom finds out, there
25 comes a time in the middle of December that the police get

1 involved, right?

2 A Yes.

3 Q And how does that happen?

4 A It was that day that my mom found out, and then
5 my -- my cousin called the police.

6 Q Okay. Where -- were you there when your cousin
7 called the police?

8 A Yes.

9 Q And where were you guys?

10 A In the house. I was -- well, my mom, she was
11 like crying and I was in the room.

12 Q Were there various -- or a lot of members of
13 your family there that day?

14 A It was my cousin, my aunt, and then later on
15 they called my sister to go the house.

16 Q After Jeimi called 9-1-1, did some police
17 officers come over?

18 A Yes.

19 Q Do you remember how many?

20 A I think it was two or one.

21 Q When the police came, did you have an
22 opportunity to speak with one of the officers?

23 A Yeah, well, they made me write everything that
24 was -- that went on.

25 Q So at that time, then, in the middle of -- I

1 think it was December 18th, did you have an opportunity to
2 write out a statement of what had happened?

3 A Yeah, they told me to write everything.

4 Q Okay. And at that time, did you give more
5 information than you had given to either Maritza or Janet or
6 the counselor?

7 A Yes. Well, I wrote it down in -- in the paper
8 that he gave me.

9 Q Okay. And so did you try to be more detailed at
10 that time?

11 A Yes.

12 Q Even then, did you tell everything that the
13 defendant had done?

14 A No.

15 Q What part did you leave out?

16 A Like the details like what he would do with his
17 hand, his tongue.

18 Q Okay. Did you -- you told the police he touched
19 you with his hands, correct, at that point?

20 A Yes.

21 Q And that he put his fingers actually inside of
22 you?

23 A I think I wrote it down.

24 Q Okay. But you said with his tongue. So at that
25 time, you didn't tell anyone, yet, what he had been doing to

1 you with his tongue?

2 A No, I didn't tell no one.

3 Q And why is that?

4 A Well, I didn't write it down. It was too many
5 stuff I had in my head.

6 Q Okay. So out of the three pages that you ended
7 up writing, you just tried to be as detailed, but that one you
8 didn't tell. At that point, had you told anyone those kinds
9 of details about what the defendant had been doing to you?

10 A Like someone in my family?

11 Q Anybody?

12 A No.

13 Q Okay. Then at some point after you have that
14 initial interview or meeting kind of with the police, does
15 someone come to your school to talk to you about this?

16 A Yes.

17 Q And when was that?

18 A Like January.

19 Q Were you actually at school?

20 A Yes, I was in school, and then they call me that
21 -- they told me that someone wanted to see me.

22 Q Who called you?

23 A Well, they sent someone to the room where I was
24 and they told me to go down to the office.

25 Q Did you go down?

1 A Yes.

2 Q And who was there, if anyone?

3 A A detective.

4 Q Were you -- were you expecting to see him that
5 day?

6 A No.

7 Q Had you ever met him?

8 A No.

9 Q So what happened once you met with the
10 detective?

11 A Well, he started to ask me questions of what had
12 happened.

13 Q With who?

14 A With the defendant.

15 Q Where were you when he started to ask you these
16 questions?

17 A It was like in one of the rooms by the office.

18 Q Okay. Did he actually have like a tape recorder
19 or something and --

20 A Yes.

21 Q -- record you?

22 A Yes.

23 Q And did you talk to him a little bit about the
24 things that you've just testified about?

25 A No.

1 Q Pardon me?

2 A I didn't tell him like the details. Like he
3 would -- he would ask me questions and I would just answer his
4 questions.

5 Q Did -- how did you feel during that interview?

6 A I was nervous.

7 Q Okay. So that interview that you gave to him,
8 was it fairly brief?

9 A Yes.

10 Q All right. Then you -- after the interview, you
11 have an opportunity to show the detective your cell phone; is
12 that right?

13 A Yes.

14 Q And how did that happen?

15 A I told him that I had like messages and voice
16 mails that he had left me.

17 Q Okay. Let's see.

18 MS. FLECK: May I approach, Your Honor?

19 THE COURT: You may.

20 MS. FLECK: I'm showing defense counsel what's been
21 marked as State's Proposed Exhibits 2 through 23.

22 May I approach?

23 THE COURT: You may.

24 BY MS. FLECK:

25 Q All right, Roxana. Showing you State's Proposed

1 Exhibits 2 through 23, I'm going to flip through these, and
2 tell me, generally, if you recognize what's depicted in these
3 photographs.

4 THE COURT: Ms. Fleck, what are the exhibit numbers
5 again?

6 MS. FLECK: 2 through 23.

7 BY MS. FLECK:

8 Q Generally, do you recognize these?

9 A Yes.

10 Q And how do you recognize what's depicted in
11 them?

12 A It's my cell phone.

13 Q Okay. Photographs of your cell phone?

14 A Yes.

15 Q And then text messages?

16 A And missed calls.

17 Q And were these --

18 A Pictures.

19 Q Okay. Were these the images that you showed to
20 Detective Jaeger?

21 A Yes.

22 Q These photographs fairly and accurately depict
23 the way your cell phone looked that day?

24 A Yes.

25 MS. FLECK: Move for admission of State's 2 through

1 23.

2 THE COURT: Any objection?

3 MR. FELICIANO: No objection.

4 THE COURT: All right. 2 through 23 are admitted.

5 (State's Exhibit 2 through 23 admitted.)

6 MS. FLECK: Permission to publish.

7 THE COURT: Any objection?

8 MS. FLECK: Permission -- any objection?

9 MR. FELICIANO: No objection. No.

10 THE COURT: Publish.

11 MS. FLECK: Thank you.

12 BY MS. FLECK:

13 Q Okay. Showing you State's Exhibit 2, what do we
14 see here?

15 A That's the front of my cell phone.

16 Q So who is that a picture of?

17 A Me.

18 Q And back in 2009, was that -- well, was that
19 picture taken in 2009?

20 A Yes.

21 Q So that's just the first photograph, then --

22 A The -- the --

23 Q -- that you see --

24 A -- wallpaper in my -- my phone.

25 Q The wallpaper?

1 A Yeah.

2 Q Showing you now State's Exhibit 3, what do we
3 see here?

4 A A text message he sent me.

5 Q How did you know that this was from the
6 defendant?

7 A His phone number.

8 Q So that's the 1-702-460-1242?

9 A Yes.

10 Q And what does -- in Spanish, what does it say?

11 A He told me to answer the phone and that he
12 wasn't going to leave me alone until we had talked --

13 Q Okay.

14 A -- and then he told me to call him.

15 Q Sorry. And I misspoke. So this is in Spanish
16 and that's basically what it says in English?

17 A Yeah.

18 MS. FLECK: Your Honor, by stipulation, the State and
19 the defense have agreed that the interpretation of the text
20 messages will come in through the certified court
21 interpreters, so if I can just refer, then, to that throughout
22 these text messages?

23 THE COURT: Okay. I appreciate that.

24 MS. FLECK: Okay.

25 BY MS. FLECK:

1 Q So --

2 THE COURT: Are you -- when you say by stipulation
3 and it's going to come in through the court interpreters, are
4 they going to testify, or have you already stipulated to what
5 their interpretation is?

6 MS. FLECK: The --

7 THE COURT: Is it in writing somewhere?

8 MS. FLECK: Yeah. The text messages have been
9 interpreted and they have been -- that interpretation has been
10 given to the defense and we have agreed to not call the
11 interpreter and that those certified interpretations is what
12 we'll use as the interpretation --

13 THE COURT: Okay.

14 MS. FLECK: -- or the translation.

15 THE COURT: I understand. Is that correct, Mr.
16 Feliciano?

17 MR. FELICIANO: It is.

18 THE COURT: All right. Thank you.

19 BY MS. FLECK:

20 Q Okay. So it basically says, Roski, answer the
21 phone. I'm not going to leave you alone until we talk, okay?
22 Call me.

23 A Yes.

24 Q Okay. And that was on Friday, December 25th, at
25 8:50 p.m. Now, you spoke with the police on January 8th of

1 2010; is that right?

2 A The police in --

3 Q I'm sorry. You spoke with the detective?

4 A Yes.

5 Q So when you were showing him these, are these
6 the most recent text messages?

7 A Yes, those are the recent messages that he had
8 sent me.

9 Q 'Cause you had only just gotten your phone in --
10 around August of 2009, right?

11 A Yes.

12 Q So this was December of 2009, then, that you
13 received this message; is that right?

14 A Yes.

15 Q Showing you now State's Exhibit --

16 MS. FLECK: I'm sorry, Your Honor. Oh, yeah. That's
17 -- that's right. That's the State's Exhibit 3.

18 BY MS. FLECK:

19 Q Now showing you State's Exhibit 4 sent on
20 Friday, December 18th, at 2:31. Does this say, This will be
21 the message they receive if you don't answer the phone now?

22 A Yes.

23 Q And now showing you State's Exhibit 5, which is
24 sent right before this at 2:29 p.m. on December 18th, and does
25 that say, Marlene, I found Roxana and Yahir touching their

1 things naked several times?

2 A Yes.

3 Q So first, you receive this message and then the
4 follow-up message saying, This is going to be the message that
5 they receive if you don't answer your phone?

6 A Yes, the --

7 Q Who -- who is Marlene?

8 A That's Yahir's aunt.

9 Q All right. Aunt Marlene?

10 A Yes.

11 Q 'Cause his mom is Rosa?

12 A Yes.

13 Q Okay. State's Exhibit 6 from December 18th at
14 2:26, does this say in Spanish, Answer the phone or I'll tell
15 your friends and family how I found you and Yahir several
16 times?

17 A Yes.

18 Q Showing you State's Exhibit 7 sent on December
19 17th, again, these are all 2009, at 5:52. Does this say, What
20 time do you get off work, call me now?

21 A Yes.

22 Q In between these text messages, were you also
23 receiving phone calls?

24 A He would call me and I wouldn't answer the phone
25 so he would send me text messages.

1 Q Okay. Showing you State's Exhibit 8, what do we
2 see in State's Exhibit 8?

3 A It's a picture of one of my underwears.

4 Q And what does it say below it?

5 A He's asking, whose -- Whose are those?

6 Q And do you know whose those are?

7 A Yes.

8 Q They're yours?

9 A Yes.

10 Q Do you know how he got your underwear to take
11 that picture?

12 A No, I don't -- I have no idea how he got one of
13 my underwears.

14 Q Was there ever a time that you had a
15 conversation with the defendant about your underwear?

16 A No. Like one time he -- I was at the apartment
17 and he was leaving and then he called me. He told me to go
18 outside and that he had to give me something.

19 Q Okay.

20 A So I went outside and then when I got to where
21 he was with his car, he gave me one of my underwears.

22 Q Do you remember where you were when that
23 happened?

24 A In Riverbend Village.

25 Q Once you were living -- once you were 16 and

1 living at Riverbend?

2 A Yes.

3 Q Was it these underwear or different?

4 A It was those underwears. He took a picture of
5 it and he gave it back to me.

6 Q What did he say when he gave you your underwear
7 back?

8 A He's like -- he told me that -- he -- he called
9 me -- he called my house and told me to go outside. That he
10 had something to give me, and then I went outside and he just
11 handed to me.

12 Q Okay. Did he say anything else to you about
13 them?

14 A No. And then he left and then I just went
15 inside and I had no idea how he got those.

16 Q Okay. Showing you now State's Exhibit 9, what
17 do we see in this picture?

18 A Messages that I had from him, picture message
19 and then the messages.

20 Q All right. So --

21 A Text messages.

22 Q -- the first two lines that we see and it says
23 no subject, your -- and have like a little film reel on them,
24 those are --

25 A That's a picture.

1 Q -- picture messages?

2 A Yes, they're picture messages.

3 Q So he sent you the one picture of your
4 underwear. I'm showing you State's Exhibit 10. Is that
5 another picture that he sent you?

6 A Yes.

7 Q The same one?

8 A Yes -- well, one -- it was just a picture of my
9 underwear without the words, and then he sent me another
10 picture of my underwear with the words saying -- or asking
11 whose underwear it was.

12 Q Okay. All right. So I believe that both of
13 these exhibits show the one that says whose are these, but
14 you're saying that there was one picture that didn't have that
15 on it?

16 A Yes.

17 Q Okay. And then we see three phone calls from
18 this -- that 702-460. Basically, are those saying, Roski,
19 call me when you leave, Roski, call me when you leave, Roski
20 --

21 A Yes.

22 Q -- call me when you leave?

23 A Yes.

24 Q Was -- would the defendant repeatedly send the
25 same text if you wouldn't respond?

1 A Yes. He would tell me to answer the phone or if
2 I was working.

3 Q Now showing you State's Exhibit 11. What's
4 depicted in this photograph?

5 A A picture of me.

6 Q And how did that -- was that something that was
7 in your phone or did he send that to you?

8 A It was in his phone. That day, it was the day
9 of my 15. He had that picture a while back, and then that's
10 when after I got -- they took me to do my hair and my makeup
11 for the 15 in the morning and he took the picture.

12 Q Okay. Now showing you State's Exhibit 12,
13 another text message from the defendant on December 12th at
14 8:04 p.m. Does this say, Roski, call me when you get off
15 work, okay?

16 A Yes.

17 Q 13 at 1:14, what does this say?

18 A He asked me where I was. I...

19 Q Okay. State's Exhibit 14 at 5:08 on December
20 17th, what does this one say?

21 A What time do you get out of work? Call me.

22 Q And then later at 5:52 in State's Exhibit 15,
23 what does he say?

24 A What time do you get out of work? Call me now.

25 Q Okay. Now showing you State's Exhibit 16, is

1 this another call log?

2 A Missed calls.

3 Q Missed calls? And we see at the top missed
4 calls from (702) 460-1242 --

5 A And then it has --

6 Q -- so were all of these calls --

7 A -- 30 -- 30 missed calls.

8 Q Pardon me? 30 missed calls from him?

9 A Yes. From that number.

10 Q And these are starting on November 23rd, we see,
11 at 6:51, 6:53, 6:54, correct?

12 A Yes.

13 Q State's Exhibit 17 goes into later dates in
14 November, from the 23rd to the 25th; is that correct?

15 A Yes.

16 Q And then State's Exhibit 18, are we continuing
17 on in missed calls now through December?

18 A Yes.

19 Q State's Exhibit 19, from the first of December
20 to the 5th of December?

21 A Yes.

22 Q State's Exhibit 20, up until the 6th of
23 December?

24 A Yes.

25 Q State's Exhibit 21, now all the way through to

1 the 16th; is that correct?

2 A Yes.

3 Q State's Exhibit 22, through the 18th; is that
4 right?

5 A Yes.

6 Q And State's Exhibit 23, up through the 22nd of
7 December?

8 A Yes.

9 Q Besides all these missed called to your cell
10 phone, were there also calls that we don't have photographed
11 documentation of that he would call your home?

12 A Uh-huh, he would call the house. If I wouldn't
13 answer my cell phone, he would call the house.

14 Q Okay. Just going back to the beginning, which I
15 should have showed you this at the very beginning, but --

16 MS. FLECK: State's -- showing defense counsel what's
17 been marked as State's Proposed Exhibit 1. May I approach?

18 THE COURT: You may.

19 BY MS. FLECK:

20 Q What do we see in State's Proposed Exhibit 1?

21 A It's a picture of me and my mom.

22 Q Okay. How old were you in this picture?

23 A I was turning 13.

24 Q So you were 12?

25 A Yes.

1 Q 12 to 13?

2 A Yes.

3 Q Okay. Does this photograph fairly and
4 accurately depict the way you looked back then at about 12, 13
5 years old?

6 A Yes.

7 MS. FLECK: Move for admission of State's Proposed 1.

8 THE COURT: Any objection?

9 MR. FELICIANO: No.

10 THE COURT: 1 is admitted.

11 (State's Exhibit 1 admitted.)

12 MS. FLECK: Permission to publish.

13 THE COURT: You may.

14 BY MS. FLECK:

15 Q So back when you were living with the defendant
16 in that three-bedroom apartment, once the threats started and
17 he started touching you in all the ways that you've just
18 described, this is how you looked?

19 A Yes.

20 Q Okay. Thank you.

21 MS. FLECK: I'll pass the witness, Your Honor.

22 THE COURT: All right. Can counsel approach very
23 quickly for 15 seconds.

24 (Bench conference.)

25 THE COURT: We've been going for two hours now, so

1 I'm going to give them a break. The question is do we give
2 them a short break or do you want to give them a lunch break
3 now?

4 MS. FELICIANO: Probably a lunch break now, right?
5 Yeah.

6 THE COURT: Okay. Let's do that then.

7 MS. FLECK: Okay. Thanks.

8 THE COURT: I just wanted to make sure.

9 MS. FLECK: Should I put this in as an exhibit?

10 MR. FELICIANO: Yeah.

11 MS. FLECK: Okay.

12 THE COURT: Is it the translations?

13 MS. FLECK: Yeah.

14 THE COURT: Okay. You might as well so the
15 record's --

16 MS. FLECK: Yeah.

17 THE COURT: Okay.

18 (End of bench conference.)

19 MS. FLECK: So I'm going to have this marked, then,
20 as State's Exhibit 24, and by stipulation, it will come in,
21 and it's the translation.

22 THE COURT: All right. I appreciate that.

23 MS. FLECK: Thank you.

24 THE COURT: All right, ladies and gentlemen. What
25 we're going to do is we're going for about two hours now so

1 it's time for a break. It's 12:30 so we might as well take
2 our lunch break now. Let's take a one-hour lunch break and we
3 will continue afterwards.

4 During this break, you are admonished that until you
5 begin deliberations you are still under oath and have not been
6 discharged. Do not reach any conclusions about this case as
7 you have not heard all of the evidence. Do not talk to anyone
8 about this case, do not investigate any facts of this case, do
9 not view any media, press or Internet reports about this case,
10 do not talk to anyone who may be involved in any way with this
11 case, do not discuss the facts of this case with each other.
12 Remember to wear your badge at all times around the
13 courthouse.

14 Now, because we are now into the witnesses, it's
15 actually -- there's some possibility that there may be other
16 witnesses out in the hallway, or if you go downstairs to one
17 of the sandwich shops, it's possible that one of the other
18 witnesses who is waiting to testify later may be getting a
19 sandwich also, so while you're down there, make sure you have
20 your badge on and you're welcome to socialize among yourself,
21 but don't talk about this case because they may overhear
22 something that you say, all right? See you guys here in one
23 hour, which would be at 1:30.

24 THE MARSHAL: All rise for the exiting jury, please.

25 THE COURT: And please leave your notebooks on your

1 chair.

2 (Jury recessed at 12:25 p.m.)

3 THE COURT: All right. Ms. Perez, what we're going
4 to do, as you've just heard, is we're going to take a lunch
5 break. If you can be here at shortly before 1:30, and on your
6 way out, you may want to talk to the DAs. They may have some
7 specific instructions for you, but you know, go get something
8 to eat and something to drink and all that kind of stuff, and
9 we'll see you in an hour, all right? And we're going to have
10 the DA stay for a couple minutes. Just if you want to -- do
11 you want her to wait in the hallway to talk to you?

12 MS. FLECK: No. Actually, Debbie will take her and
13 give her to her sister and then they can go and grab some food
14 or something.

15 THE COURT: Okay. So why don't you go with Debbie
16 back there and thank you very much. See you in an hour.

17 MR. FELICIANO: And Judge, I -- we'd ask that she be
18 admonished not to discuss her testimony.

19 THE COURT: Right. Ms. Perez, since you're not done
20 testifying and this case is still going on, please do not
21 discuss the substance of your testimony or any of the
22 questions that you have been asked with anybody else in this
23 case other than maybe the attorneys, but don't talk with, you
24 know, your family members, any police officers, anybody like
25 that about what happened here in court, all right? All right.

1 Thank you.

2 THE WITNESS: Thanks.

3 THE COURT: All right. Ms. Perez has now left the
4 courtroom. We are now still on the record but outside the
5 presence of the jury. Was there anything that either side
6 wanted to put on the record?

7 MR. FELICIANO: No, Your Honor.

8 MS. FLECK: Nothing from the --

9 THE COURT: State?

10 MS. FLECK: Nothing from the State.

11 THE COURT: All right. See you guys in an hour then.

12 MS. FLECK: Oh, I guess one thing.

13 THE COURT: What's that?

14 MS. FLECK: You know, I don't -- well, I'll talk --
15 I'll actually address it when we get back 'cause I need to
16 think about it.

17 THE COURT: Do you want to address it now or do you
18 want to wait?

19 MS. FLECK: No, I'll wait till --

20 THE COURT: 1:30?

21 MS. FLECK: 'Cause I don't know --

22 THE COURT: Yeah.

23 MS. FLECK: I don't -- I'll address it when I get
24 back.

25 THE COURT: If we're going to do anything that's on

1 the record, maybe we come back, you know, 25 after. That way
2 the jury's not waiting as long.

3 MS. FLECK: Okay.

4 THE COURT: Do you guys mind?

5 MS. FLECK: No, not at all.

6 THE COURT: All right with everybody? Okay.

7 MS. FLECK: It won't matter now, anyway, so --

8 THE COURT: Okay.

9 MS. FLECK: Thank you.

10 THE COURT: All right. See you guys in an hour.

11 MS. FLECK: Thank you.

12 (Court recessed from 12:27 p.m., until 1:30 p.m.)

13 (Outside the presence of the jury.)

14 THE COURT: All right. Let's -- ready to go back on
15 the record?

16 Ready, Sara?

17 THE CLERK: Yeah.

18 THE COURT: All right. Back on the record. State
19 versus Guillermo Renteria-Novoa, C268285. Mr. Renteria-Novoa
20 is present in custody with the assistance of a Spanish
21 interpreter. Was there anything that either side wanted to
22 put on the record? Ms. Fleck, you indicated you might have
23 something, or not?

24 MS. FLECK: No, Judge, there's no issues.

25 THE COURT: All right. Is Roxana out in the hallway

1 right now? Is she ready to go?

2 MR. GRAHAM: Would you like me to bring her in if she
3 is?

4 THE COURT: Well, hang on. Is there anything that
5 you guys want to put on the record before --

6 MR. FELICIANO: No.

7 THE COURT: -- we bring her in here? Then I think
8 anything -- you guys need the ELMO?

9 MR. FELICIANO: No, I turned it off, actually, 'cause
10 I'm using that to put papers on top of.

11 THE COURT: Okay. Thanks. All right. Then yeah,
12 let's bring her in.

13 MR. FELICIANO: I will need the ELMO. I take that
14 back.

15 THE COURT: Oh, well, hang on. Hang on one second
16 then. I'm sorry.

17 MR. FELICIANO: I'm just realizing --

18 THE COURT: He changed his mind.

19 MR. FELICIANO: I realize I do need it.

20 MS. FLECK: Can you -- will you just move it just
21 slightly that way so -- just so I can see her, and I'll move a
22 little bit this way, actually. All right. That's fine. Then
23 I can see her.

24 MR. FELICIANO: Which way?

25 MS. FLECK: No, it's good. Actually, I can see her.

1 MR. FELICIANO: Okay. You good?

2 THE COURT: Randy, do we have all of our jurors?

3 THE MARSHAL: No.

4 THE COURT: No? Oh.

5 THE MARSHAL: They might have been in the restroom.

6 I just went out and collected the parking tickets and I had 12
7 so --

8 THE COURT: Okay.

9 (Pause in proceedings)

10 THE MARSHAL: Do you want -- do you want Roxana back
11 on the stand before or after the jury?

12 THE COURT: Yeah. Let's get her in here. Well, do
13 you guys have a preference? It's easier that way to me, I
14 think, but --

15 MR. FELICIANO: No preference.

16 THE COURT: Let's bring her in here first.

17 THE MARSHAL: Please watch your step over the wire.
18 And please remember, talk directly into the microphone. If
19 you need to slide up a little bit more.

20 THE WITNESS: Thank you.

21 (Pause in proceedings)

22 MS. FLECK: Is the jury coming in now?

23 THE CLERK: No, he's getting water.

24 MS. FLECK: I guess one issue that I kind of have is
25 I don't know --

1 THE COURT: We have the witness here. I don't know
2 if that's something that you need to --

3 MS. FLECK: Yeah, Judge, I'm sorry. I need to.

4 THE COURT: All right. Let's have her -- let's have
5 -- Roxana, I'm sorry. Let's have you step out --

6 MS. FLECK: I'm sorry.

7 THE COURT: -- in the hallway for a second. All
8 right. Oops. All right.

9 We're back on the record outside the presence of the
10 jury and the witnesses, and there was a matter that the State
11 wanted to put on the record.

12 MS. FLECK: Yeah. There is a -- that -- the Silver
13 State Counseling recording, we just got these this week, and I
14 turned them over to the defense. Within that, there's the
15 physician's progress notes, and he says that basically the
16 aunt and Roxana say that they haven't told Roxana's mom yet
17 because they're afraid that she's going to confront the
18 defendant and then the defendant is going to cause problems
19 with INS for them.

20 So now the defense is going to cross her about their
21 status in the United States and I think it's too -- I think
22 it's more prejudicial than probative. I don't think that
23 there's -- you know, the fact that she didn't -- that her and
24 the aunt hadn't told the mom yet I don't think is really
25 relevant to the case or any conduct, really, of the victim

1 and, you know, as the defendant's custody status in the United
2 States, the fact that he is alien illegal and, you know,
3 during opening, it was said, well, he could have -- he could
4 flee. Well, I mean, he's here legally, so --

5 THE COURT: So are you -- wait.

6 MS. FLECK: I object to that coming in.

7 THE COURT: All right. So wait. They're -- you're
8 talking about the citizenship status of who, of the mom or of
9 the defendant? I'm confused now. I'm not sure what you're --

10 MS. FLECK: Mom and --

11 THE COURT: -- saying?

12 MS. FLECK: -- the girls because basically what she
13 told the counselor -- what they told the counselor is they
14 haven't told the mother yet, and one of the reasons that they
15 haven't told the mom is because they're afraid that mom is
16 going to confront defendant and then mom is going to get mad
17 at defendant and then defendant is going to cause problems for
18 her and the daughters through INS. Basically the same reason
19 most illegal victims don't go to the authorities right away,
20 'cause they're scared of their immigration status.

21 THE COURT: Okay.

22 MS. FLECK: And --

23 THE COURT: So what is the defendant fleeing? Did I
24 -- or did I mishear that?

25 MS. FLECK: No, I just -- I'm just saying.

1 THE COURT: I'm confused.

2 MS. FLECK: I just -- like it shouldn't come in about
3 the defendant even though during opening it was sort of the
4 door was a little bit opened up, I think. I don't want that
5 -- an issue. You know, their status here in the United States
6 I think is too prejudicial, you know. You know what -- and I
7 don't think that there's any probative value to it, nor is it
8 relevant.

9 THE COURT: All right. Your response? I mean, I
10 don't know if --

11 MR. FELICIANO: Judge?

12 THE COURT: -- you're even planning on doing this or
13 not. I have no idea, but --

14 MR. FELICIANO: Well, Judge, when I filed my
15 discovery motion, I asked for any type of benefits -- any type
16 of immigration benefits that would be received in connection
17 with this case. We would be entitled to that information if
18 it exists. That was granted with no opposition, so we
19 definitely -- they definitely knew we were going to be getting
20 into this.

21 THE COURT: Well, but wait. I mean, are you just
22 going to ask about their citizenship status or are you going
23 to ask if they received a benefit, 'cause that's two different
24 things?

25 MR. FELICIANO: I'm going to ask about any benefits

1 that have been received from -- in connection with being a
2 victim in this case, or any other type of benefits --

3 MS. FLECK: Well --

4 MR. FELICIANO: -- that's what I'm going to ask.

5 THE COURT: But okay. Here's my question. Have
6 there been any citizenship benefits that have been offered?

7 MS. FLECK: No, of course not.

8 MS. FELICIANO: We --

9 MR. FELICIANO: Well, maybe --

10 MS. FELICIANO: We were handed these records Tuesday
11 morning --

12 THE COURT: Okay.

13 MS. FELICIANO: -- so we have no way of knowing. We
14 got this Tuesday morning. It's the first we've ever heard.
15 And just so that the record is clear, it's not that
16 [inaudible] and cousins say we're not telling the mom yet,
17 it's that Roxana told the counselor that both she and her mom
18 are illegals. She's afraid to tell her mom for fear she would
19 confront boyfriend and cause problems with INS for them.

20 So that's her reason for not disclosing. It's not
21 nondisclosure at the time, that's what she tells the counselor
22 of why she didn't disclose for years, just to clear up the
23 record on how that came about and what's actually in the
24 counseling records. So I mean, at that point, we'd be
25 entitled to ask the question, have you received, you know,

1 say, a U visa as being a victim from this case. We weren't
2 able to address anything ahead of time because we got these
3 Tuesday morning in court.

4 MS. FLECK: First of all, if I had extended a U visa
5 or authorized through our office a U visa, that information
6 would have been turned over to the defense, so that has
7 absolutely nothing to do with what's in this document, which
8 is through a counselor. So a benefit, them asking -- they
9 know that our office have not -- has not extended any benefits
10 because of we would have turned that over. No immigration
11 status issues have come up in this case at all until this
12 statement. And what she never says that -- the reason she
13 didn't tell for years, she says both patient and mother are
14 illegals. Patient's afraid to tell her mom for fear that
15 she'll confront the boyfriend and cause problems with INS for
16 them. She informed her aunt's mother, you know, blah, blah,
17 blah, the rest.

18 It doesn't say that's why she never told for years
19 and that that's her motive for never disclosing, so either way
20 it has nothing to do with any benefits. So for them to ask
21 the question, have you been given a benefit based upon your
22 illegal status knowing that no benefit has been given -- I
23 mean, just because this document comes out doesn't mean that
24 the defense has it known that we haven't offered any kind of
25 immigration benefits.

1 THE COURT: All right.

2 MR. FELICIANO: The DA's office isn't the only place
3 that offers those types of benefits. They can get their --
4 from my understanding is there are certain places like Child
5 Haven or Safe Nest which will actually refer people out to
6 apply for U visas and things along the -- along those -- along
7 those lines. Counselors, churches, other places will try to
8 get people status, so I think we're entitled to know that.

9 THE COURT: Well, why does it have to be about
10 immigration? There's all kinds of benefits that theoretically
11 could have been offered by anybody. Why don't you just ask it
12 in a more generic way? I mean, why does it have to --

13 MS. FLECK: There's a --

14 THE COURT: -- specifically be a U visa as opposed to
15 money or, you know, a new car? I mean, why -- why fixate on
16 that?

17 MR. FELICIANO: Well, I mean, that's a pretty
18 substantial benefit. I think -- I don't think we can say that
19 money or a new car would be equal to --

20 THE COURT: How is money not a substantial benefit if
21 you offered her a million dollars?

22 MR. FELICIANO: Well, it --

23 THE COURT: My question is, other than for the
24 prejudicial effect, why are you focussing on the -- on the
25 immigration status when there are a million types of benefits

1 that could theoretically have been offered to her?

2 MR. FELICIANO: Because that is inducement why -- to
3 fabricate.

4 THE COURT: And how is a million dollars not an
5 inducement to fabricate? Why don't you ask her did you --
6 were you offered a million dollars? Why are you fixating on
7 the immigration status other than for the prejudicial effect?

8 MR. FELICIANO: Because we actually -- I think we
9 have a good faith basis to ask that because we have
10 information independent that there might have been some
11 immigration benefits extended, not -- maybe not through the
12 DA's office, but from some other agency.

13 THE COURT: Well, wait. You just said you have
14 information?

15 MR. FELICIANO: Yes.

16 THE COURT: What agency?

17 MR. FELICIANO: I don't know.

18 MS. FELICIANO: No, from the -- from the -- he's
19 talking about the --

20 MR. FELICIANO: Well --

21 MS. FELICIANO: -- counseling records, that she was
22 concerned about it. A U visa is a special visa that's
23 conferred --

24 THE COURT: I know what a U visa is --

25 MS. FELICIANO: Right. So --

1 THE COURT: -- but is it any indication that, in
2 fact, something like that has been offered in this case?

3 MR. FELICIANO: Well, through our investigation in
4 this case, that's -- we have reason to believe it. I cannot
5 confirm it, though.

6 MS. FLECK: Okay. Really? And where is the
7 reciprocal discovery if that's something that they intend to
8 use during cross-examination, number one? Number two, who
9 would be extending a U visa that the district attorney's
10 office, who's prosecuting a sexual assault case, that we
11 wouldn't know about a U visa being extended? And he doesn't
12 know who it's from, some investigation has brought this up? I
13 mean --

14 MR. FELICIANO: I mean --

15 MS. FLECK: -- I hope we have more of an offer of --

16 THE COURT: I mean, you know, a U visa is a --

17 MS. FLECK: -- proof than that.

18 THE COURT: -- it's a federal thing. It's -- there
19 either is one or there isn't one. How can you not have
20 information on it if there is one, right?

21 MR. FELICIANO: Judge, I don't know -- I cannot say a
22 hundred percent for sure if there -- if there were immigration
23 benefits extended, but I do have reason to believe there may
24 have been, so --

25 MS. FLECK: Which as what?

1 MR. FELICIANO: I don't have to tell her -- I don't
2 have to tell her. It could be something between me and my
3 client.

4 THE COURT: Well, you have to tell me --

5 MR. FELICIANO: That's confidential.

6 THE COURT: -- because if there's -- if there's no
7 basis for this, you know, that's one thing. If there is a
8 factual basis for it, that's another thing, but playing hide
9 the ball here and saying, well, there's a factual basis but
10 I'm not telling you what it is --

11 MS. FELICIANO: Okay. Then --

12 THE COURT: -- is not proper.

13 MS. FELICIANO: -- we'd ask to do it, then, ex parte
14 without the DA in here. If you're forcing us to provide our
15 good faith basis, we need to do it on an ex parte basis and it
16 would need to be sealed from the DA for the purposes of
17 appeal.

18 MS. FLECK: It's mind boggling to me that this is
19 happening right now, and that they're basically going to
20 just --

21 THE COURT: So --

22 MS. FLECK: -- spring this on the victim.

23 THE COURT: Okay. Let me ask you -- let me ask you
24 this then. You're saying that somebody without consulting
25 with the DA's office acting not at the bequest of the DA's

1 office offered somebody in this case, I'm assuming you're
2 talking about Roxana, a U visa and that somehow that's a
3 benefit related to her testimony even though the DA's office
4 doesn't know about it; is that what you're saying?

5 MR. FELICIANO: If she's a victim of a crime and
6 she's entitle -- and she gets a visa, that would be a benefit
7 for her to continue on with the prosecution, even if the DA
8 didn't know about it.

9 THE COURT: So --

10 MS. FELICIANO: And being handed counseling records
11 on two Tuesday, that confirms that she was concerned about her
12 immigration status, further gives us grounds to cross-examine
13 her just based on what's contained in there. The fact that
14 they handed us counseling records that says -- their own
15 evidence that says that she was concerned about immigration
16 gives --

17 THE COURT: Well --

18 MS. FELICIANO: -- us a good faith basis.

19 THE COURT: -- let me ask you this. Okay. Let's
20 play with this for a second because since you're refusing to
21 disclose the information and you say you can't disclose it in
22 the presence of the DA.

23 MS. FELICIANO: It's privileged information.

24 THE COURT: Okay.

25 MS. FELICIANO: Yes.

1 THE COURT: Here's my hypothetical. You ask her have
2 you been given a U visa, she says no.

3 MS. FELICIANO: That's it.

4 THE COURT: What's your next step?

5 MS. FELICIANO: That's it.

6 THE COURT: So --

7 MS. FLECK: So then I -- I mean, I would want an
8 offer of proof. I don't understand how they get to just ask a
9 question like that with absolutely no basis for anything. I
10 mean, there's reciprocal discovery. If they plan on using
11 something and they have information that a witness in the
12 State's case is lying or is in some way perjuring themselves
13 because of information that they have, they have to turn that
14 over to the State.

15 MS. FELICIANO: That's actually --

16 MS. FLECK: This is a two-way street.

17 THE COURT: All right. So what is the specific
18 question you want to ask Roxana?

19 MR. FELICIANO: I would just ask her if she has
20 received any immigration benefits as a result of this case.

21 MS. FLECK: No, because the inference is --

22 MR. FELICIANO: And then --

23 MS. FLECK: -- she's illegal, and so having no basis
24 for that but this. Her fearing immigration issues as every
25 single illegal defendant and/or victim in the country does,

1 every single one, her fearing that is entirely different than
2 her being offered or given a benefit, completely different.
3 So if they're saying somehow she got a benefit because in the
4 counseling records it says she has fears about INS, how --
5 where is the -- where is the nexus between those two things?

6 THE COURT: I think the inference that they're trying
7 to make, or the implication is that whether or not you knew
8 about it apparently -- what I gather is somehow they have
9 obtained information, presumably from the defendant, that she
10 has applied for some kind of a U visa on the basis that she's
11 the victim of a crime and you didn't know about it because
12 it's not a benefit extended by you, but it's a benefit that
13 she has applied for or at least sought from the federal
14 government, I'm guessing is what they're saying and I'm
15 guessing they heard it from their client.

16 MS. FLECK: Okay. Well, then bring her in and ask
17 her if she's received a benefit outside the presence of the
18 jury.

19 THE COURT: Well, your question is whether she has
20 received a benefit. Do you have information she actually has
21 received a U visa or is she seeking one or what?

22 MR. FELICIANO: Well, I mean, again, we're getting
23 into privileged information that we had asked -- we would
24 disclose at ex parte.

25 MS. FLECK: Privileged information. The defendant

1 telling them something about a witness in our case is now
2 privileged information that they're -- that they plan to use
3 on cross-examination.

4 MR. FELICIANO: Well, if we -- if we tell the -- if
5 we can tell Your Honor ex parte, then you can determine
6 whether -- whether we can ask it or not.

7 THE COURT: Well, since apparently -- all right. Why
8 don't we just bring Roxana in right now outside the presence
9 and ask her if it's true and see what her answer is. If the
10 answer is yes, obviously we have a different picture, yes, I'm
11 applying for a visa and yes, because I'm a victim of a crime
12 [inaudible] that's one thing. If she says no, I don't know
13 what you're talking about, then we know where it's going to
14 go. So why don't we bring her in here and ask her?

15 MS. FLECK: I agree.

16 THE COURT: All right. Randy, let's bring Roxana
17 back in here.

18 All right. Hi, Roxana. Hi, Roxana. You understand
19 that you're still under oath from this morning? Remember, you
20 took the -- took the oath.

21 THE WITNESS: Yes.

22 THE COURT: All right. And the oath is -- still
23 applies to you right now.

24 We have a couple questions to ask you before we bring
25 the jury in. We just want to clarify some things that are

1 going on here. What is your current citizenship statute --
2 status in the United States?

3 THE WITNESS: Right now?

4 THE COURT: Yeah.

5 THE WITNESS: I just have a work permit.

6 THE COURT: You have a work permit?

7 THE WITNESS: Yes.

8 THE COURT: Like a green card in other words or what?

9 THE WITNESS: It's an employment permit.

10 THE COURT: What about your mom; do you know?

11 THE WITNESS: She has the same.

12 THE COURT: Okay. So let me ask it this way. Are
13 you in the process or have you made an application to change
14 that status?

15 THE WITNESS: No.

16 THE COURT: Are you seeking any kind of -- any kind
17 of visa, any kind of -- are you doing -- have you made any
18 application to any agency of the federal government, or state
19 government even, to -- based on the fact that you are the
20 victim of a crime?

21 THE WITNESS: We had -- we did a application for --
22 for the work permit.

23 THE COURT: For the work permit?

24 THE WITNESS: Yes.

25 THE COURT: Okay. And is that the only application

1 you filed?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Do you have any questions for her,
4 Mr. Feliciano?

5 MR. FELICIANO: Yes, Judge. Good afternoon.

6 THE WITNESS: Hi.

7 MR. FELICIANO: The work permit that you were given,
8 did you just apply for that -- did you apply for that based on
9 what happened in this case?

10 THE WITNESS: Yes.

11 MR. FELICIANO: Yes, you did?

12 THE WITNESS: Yes.

13 MR. FELICIANO: Okay. And was it given to you
14 because you're a victim of a crime?

15 THE WITNESS: Yes.

16 MR. FELICIANO: Okay. Thank you.

17 THE COURT: Ms. Fleck, questions?

18 MS. FLECK: Okay. So when did you apply for -- when
19 this crime actually happened, what was your status in the
20 United States?

21 THE WITNESS: Illegal.

22 MS. FLECK: Okay. When you talked to the police on
23 December 18th and you first gave that statement to the police,
24 what was your status?

25 THE WITNESS: Illegal.

1 MS. FLECK: And then when you talked to the detective
2 in January of 2010, what was your status?

3 THE WITNESS: Illegal.

4 MS. FLECK: How about at preliminary hearing, which
5 was on September 17th of 2010?

6 THE WITNESS: Well, my mom, she got the -- she got
7 sent to apply for the visa -- you'd call U visa and but she --
8 at first she -- she was like she didn't want to like apply for
9 it 'cause she was scared that, you know, they're going to
10 re-deport her or something.

11 MS. FLECK: Okay.

12 THE WITNESS: So it took her, I don't know, months to
13 decide if she wanted to apply for it or not.

14 MS. FLECK: And when was that?

15 THE WITNESS: I don't really remember what month she
16 applied for it.

17 MS. FLECK: Do you remember when you got it?

18 THE WITNESS: Like January.

19 MS. FLECK: Of what year?

20 THE WITNESS: 2011.

21 MS. FLECK: Okay. Okay.

22 THE COURT: Who applied for it? Did you apply for it
23 or did she apply for it for both --

24 THE WITNESS: My mom 'cause --

25 THE COURT: -- of you?

1 THE WITNESS: Yeah, my mom applied for it. Well,
2 they sent her to -- they -- they told her that she could go
3 apply for the U visa --

4 THE COURT: Okay. So --

5 THE WITNESS: -- being a victim.

6 THE COURT: -- in January 2011 you were how old?

7 THE WITNESS: 11.

8 THE COURT: No, in January 2011, when the visa was --
9 when you got the visa, how old were you?

10 THE WITNESS: 16.

11 THE COURT: You were 16? All right. I don't know a
12 lot about visas. I know a little bit. But let me ask you
13 this. When you were -- is it the kind of -- if -- you may not
14 know this, either. Is it the kind of visa where if your mom
15 gets one, you automatically get one because you're a minor, or
16 are they two separate applications?

17 THE WITNESS: I -- they told her that -- 'cause I was
18 a victim and she -- and she didn't know what was going on with
19 me that she was also a victim because she didn't know what was
20 going on with this problem with me, so she could apply for it
21 too. That's what I heard.

22 THE COURT: Well, I guess, here's my question, and
23 you may or may not know this, but if you do, let me know. Is
24 it something you could have gotten without your mom or your
25 mom could have gotten without you, or is it because you're

1 mother and daughter, they give one to both of you if they --
2 or to neither of you?

3 THE WITNESS: I don't know. Probably 'cause I was
4 underaged she could. I don't know.

5 THE COURT: Okay. Any other questions by either
6 side?

7 MS. FLECK: Nothing right now. Thank you.

8 MR. FELICIANO: Yes. Who actually told you you can
9 go get the U visa?

10 Who gave you that information?

11 THE WITNESS: I think it was some lady called Julie
12 Trejo [phonetic].

13 MR. FELICIANO: And do you know who she was with?
14 Was she with the DA's office -- or the district attorney's
15 office?

16 THE WITNESS: Well, at first, we went to the court on
17 Pecos to get like a restraining order --

18 MR. FELICIANO: Okay.

19 THE WITNESS: -- or like -- and then we weren't --
20 like the first one it wasn't approved so she went again and I
21 don't know, that time I didn't go with her, but she has like
22 the card of Julie Trejo that told her that she could go apply
23 for it and then they -- they're going to send her the papers,
24 like the packet of all the applications. So she had that
25 packet for a while and then like she didn't want to apply for

1 it. She wasn't sure. So then like she went to see a lawyer
2 to see -- you know, she went to talk to a lawyer.

3 THE COURT: But do you remember who -- what
4 organization Julie Trejo actually works for?

5 THE WITNESS: No, I don't know. My mom has the
6 cards, but -- her card and -- but I don't know 'cause that
7 time she went by herself and I think my sister, and when I
8 came home, she told me about like that, that she could go
9 apply for it.

10 THE COURT: Where -- do you know where she went? Did
11 she go to a court or did she go to the DA's office, or where
12 did she go when she returned with this paperwork?

13 THE WITNESS: I'm not sure if it was at the court,
14 the Pecos, the family court.

15 THE COURT: Okay.

16 THE WITNESS: Or if she went to some other place.

17 THE COURT: And she was there to get a TPO, is that
18 why she went there? I thought I heard you say that. She went
19 to get a TPO and then she returned with this paperwork from
20 Julie Trejo, or did I mishear that?

21 THE WITNESS: Yeah. Well, we went first to get a
22 restraining --

23 THE COURT: A restraining order, right.

24 THE WITNESS: Yeah. And I -- the first one, it
25 wasn't approved so she went again to like rewrite, like you

1 know how they make you right everything? And I'm not sure if
2 that time she went to the family court or she went to some
3 other office. I don't know which office, but she has like the
4 cards. She has all the cards where she went to.

5 THE COURT: Okay. All right. Any other questions?

6 MS. FLECK: Nothing from the State.

7 MR. FELICIANO: Nothing from the defense.

8 THE COURT: All right. Do you want her to step back
9 outside?

10 MR. FELICIANO: Yes, please.

11 THE COURT: Can you step outside again for a second,
12 I'm sorry.

13 THE WITNESS: (Complies.)

14 THE COURT: Well, we -- you know, my clerk just
15 checked Outlook to see if Julie Trejo was a county employee or
16 an employee of the court system and she's not in the system,
17 so I don't know who she is. It's possible she may have worked
18 in the self-help center down at family court or one thing my
19 clerk mentioned is they have those -- what are they called,
20 attorney referral base where sometimes attorneys will go down
21 there like one day a week and --

22 THE CLERK: To go get free advice.

23 THE COURT: Yeah, you get free advice from the
24 attorneys in the family court, but she's not -- she doesn't
25 appear to be a county employee at all, so I don't know who

1 this person is. Or at least not currently a county employee.

2 MS. FLECK: Well, I mean, I would stand by what I
3 said before. First of all, I don't understand why that wasn't
4 turned over. I mean, that's clearly reciprocal discovery.
5 That's something that would be -- they would consider
6 exculpatory to their -- to the defendant if they believe that
7 the victim in my case is lying and that the reason she's lying
8 is to stay here legally. I don't understand how that is not
9 turned over. I mean, it's mind boggling.

10 That being said, her statement to the police is in
11 December of 2009. She testifies at preliminary hearing on
12 September of 2012 and she is not given the work permit until
13 January of 2011, so her story and her rendition of what occurs
14 is long before she is granted any kind of permit, which is not
15 until January of 2011.

16 So it's some six months after she -- or five months
17 after she even testifies at prelim, which is an entire, you
18 know, nine months after she first tells the detect -- or the
19 officer everything that she told him, so how is that even
20 relevant then? She doesn't -- when she testifies for the
21 first time, she doesn't have any kind of a permit; she's not
22 functioning under a permit. When she talks to the police in
23 December, again, we have to go back to the genesis of the
24 officers getting involved in this to begin with. The only
25 reason law enforcement becomes involved is because the

1 defendant himself starts threatening, starts making threats.

2 Then we go to the added admissions. I mean, the
3 defendant himself has admitted to a sexual relationship with
4 Roxana from the time he found her with the cousin until the
5 disclosure. He admits to that. Whether he minimizes what
6 happened or not, he admits to it, so to continually say that
7 she's lying and to continually say she's fabricating for
8 whatever reason, yesterday was that she was pregnant, now
9 today it's that she's illegal, whatever it is how can they
10 continually say that when their own client has admitted to
11 this relationship. Then to be able to say something that they
12 withheld from the State and that is prejudicial when she's not
13 fabricating based upon the defendant's own admissions.

14 MR. FELICIANO: Judge, we don't -- we didn't have
15 access to Roxana and her mother. We tried to talk to them but
16 they wouldn't speak to us. We got this on Tuesday, which
17 basically confirmed what -- what we believed regarding their
18 immigration status. Now, as far as the State's concerned,
19 they were on notice that we -- that we wanted this
20 information. They knew -- let's see. Request 15 of my
21 discovery motion, which was granted, was asking for any types
22 of immigration benefits received by the complaining witness as
23 a result of the allegations in this case. They have a duty to
24 seek that information out. They should have been turning that
25 over to us. We don't have access to these people, they do.

1 She obviously is pretrialed, Roxana and her mother and the
2 other witnesses, and now to come in and say they didn't know,
3 they didn't know 'cause they -- either they -- 'cause they
4 didn't want to know.

5 The fact is she does -- she has got some benefit from
6 this case. She continues to get a benefit from this case.
7 Based on that, we'd actually ask for a mistrial.

8 MS. FLECK: They want a mistrial based upon
9 information that they have that they kept? When was -- I
10 mean, the discovery motion is when?

11 THE COURT: Yeah, I mean, first of all, their motion
12 for a mistrial, I mean, how can you ask for a mistrial
13 information that you've had?

14 MS. FELICIANO: No, we --

15 THE COURT: How exactly is that a basis --

16 MS. FELICIANO: We didn't have --

17 THE COURT: -- for a mistrial?

18 MS. FELICIANO: We didn't have this information. We
19 had -- we had a possibility of it, but if you'll notice, I
20 didn't mention it in my opening because we didn't have that
21 information unless Roxana took the stand and admitted she had
22 gotten the visa. When we got the counseling records on
23 Tuesday morning, we could have said, hey, we want a mistrial
24 because this contains exculpatory information in it that
25 wasn't turned over. And it had the immigration information in

1 it, which gave us then a good faith basis to question Roxana
2 about the U visa.

3 Now today, she's testified that she got the benefit.
4 We previously asked for this in discovery. This wasn't turned
5 over. At this point, this would change everything. We should
6 have had this benefit turned over to us and told about this
7 exculpatory information. That's why we're asking for a
8 mistrial. Just because we may have -- may think that there is
9 a benefit or we may, you know, think that there's a line of
10 investigation to go down, that's not discovery that we're
11 withholding from the State, and the State is drastically wrong
12 about the reciprocal discovery statute and what it covers. We
13 only have to turn over anything we intend to use in our case
14 in chief. We don't have to turn over statements that we
15 gather as part of our investigation, oral statements.

16 We didn't have -- the State says we had this
17 information before. No, we didn't. We had -- we had a good
18 faith basis on Tuesday morning when we were handed counseling
19 records with this exculpatory information. We didn't ask for
20 a mistrial then because we wanted to see how things went.

21 MS. FLECK: How --

22 MS. FELICIANO: Now --

23 THE COURT: Well --

24 MS. FELICIANO: Now, we know that there is a benefit
25 highly exculpatory to our client that we requested, that the

1 State had a duty to get us and that they never did.

2 MS. FLECK: How is a statement in a counseling record
3 likened to the U visa? And Mr. Feliciano just said that they
4 knew it and they needed to do an ex parte communication in
5 order to tell you how they know, that's how privileged this
6 information is that they have. They absolutely knew it. And
7 the reason she didn't say it in opening is 'cause she knew I
8 would have freaked out and they wanted to spring it on the
9 victim.

10 MS. FELICIANO: That's not at all true.

11 MR. FELICIANO: No, that's just not how we knew. We
12 can still tell you ex parte if we feel --

13 MS. FELICIANO: We can still tell you ex parte.

14 MR. FELICIANO: -- like --

15 MS. FELICIANO: That's -- and we didn't --

16 MS. FLECK: Well, the point is --

17 MS. FELICIANO: We're telling you --

18 MS. FLECK: -- they knew. How they knew is one
19 thing, but the point is they knew.

20 MS. FELICIANO: No, we didn't. We're telling you as
21 officers of the court we had no confirmation of that. We did
22 not know.

23 THE COURT: Well, here's the thing, all right?
24 There's kind of a handful of overlapping issues here. I mean,
25 obviously, this was not a benefit that was extended by the

1 State, but your argument is it's a benefit that Roxana or her
2 mom, I'm still not even completely clear, but sought on their
3 own that your argument is would not have been granted but for
4 their status as victims of a crime, right?

5 MS. FELICIANO: That's correct.

6 THE COURT: So -- but the problem is with a U visa,
7 and this is why -- I mean, you can probably tell the thrust of
8 my questions, who sought this benefit? Was it her or was it
9 her mom? Did she have any role in this?

10 MS. FELICIANO: She said both of them.

11 THE COURT: And is it -- but she doesn't -- but is it
12 the kind of visa where if the mom gets it, the whole family
13 gets it because they're minors, or does the minor have to
14 independently file an application? Could she have gotten one
15 on her own without her mom getting one or is it a packaged
16 deal? I honestly don't know the answer to that question, and
17 I don't know if you guys know the answer to that question.
18 Because it seems like it makes a difference because if Roxana
19 happened to receive a benefit that she neither sought nor even
20 wanted but she gets it because she's a minor, then that's --
21 makes it a lot less exculpatory than if it's something that
22 she actually had a hand in seeking.

23 MS. FELICIANO: She just test --

24 THE COURT: And that she knew would -- she would get
25 -- that -- and that she knew that approval would be effected

1 by her status as a victim, and that's why I asked what I
2 asked. And I'm not -- I'm still not clear because she
3 obviously doesn't know. She's not a lawyer. She's 18, but I
4 don't know the answer to that question.

5 MR. FELICIANO: She said that she got it as a result
6 of this case when I asked her. She clearly said that.

7 MS. FELICIANO: She --

8 THE COURT: Right.

9 MS. FELICIANO: She plainly said I got it because I
10 was a victim and my mom got it because she was a victim too.

11 THE COURT: Yeah, I know that. That may be what she
12 was told, but the question is what does she know when it was
13 sought. You know, the fact that you are sitting at home and a
14 benefit falls in your lap because your mom did something,
15 because you happen to be a victim of a crime is one thing, but
16 if it's something she sought, oh, if I testify falsely as a
17 victim, I can then seek this benefit is a different picture,
18 and that's what I'm not clear on.

19 Is this a benefit that comes with the fact that her
20 mom got it, or is it something that -- you know, we're talking
21 about her incentive. If it's something she has no control
22 over because she is a minor and someone else did it, how does
23 -- the question is does that effect her motive to lie. But
24 the -- but if it's -- if it is something she had to play, then
25 that's why if she played a role in getting the visa or if

1 she's sitting at home and her mom went and got it through the
2 court system and it just fell in her lap, that at least seems
3 like it gives her a lot less incentive to lie if it's
4 something that she has literally no role in, and that's what
5 I'm not clear on.

6 MS. FLECK: Well, especially, Your Honor, given the
7 fact that the first time she speaks to the police is in
8 December of 2009, over a year.

9 THE COURT: I understand. I understand you're saying
10 that this whole thing started before she sought the benefit.
11 I'm sure their response is going to be, because this is what
12 her opening was about, her story changed over time and so the
13 allegations became more and more severe over time, and so
14 arguably she had a motive to make these -- the crimes worse if
15 she thought it would help her get the U visa. That's the
16 argument, right? But the question is, what role did she even
17 play in getting the U visa?

18 You know, as I said, is it something that she just
19 sat there and it fell in her lap because her mom got it, or is
20 it something that she had some knowledge, foreknowledge about,
21 some role in applying for it. 'Cause that seems like the kind
22 of question about whether or not it actually provides a motive
23 to lie or not and I'm not entirely clear on that, and she --
24 you know, she didn't seem like she knew, either.

25 MS. FLECK: But even the -- even when she finally

1 tells about the anal licking and the cunnilingus, that's in
2 September of 2010, so even that is a full five months before
3 she receives this benefit. So even if you're saying, well, it
4 was incentive for her to tell more or to get more detail --

5 THE COURT: No, that's not what I'm saying. I'm just
6 -- I'm sure that's the argument they're going to make is that,
7 you know, it's -- you know, the argument they're making is
8 exculpatory doesn't just mean it's your original motive to
9 lie, it's a motive to make your story worse, it's a motive,
10 perhaps, to keep a false story going. That's what they're
11 going to say. And I don't know whether that's true or not.

12 I mean, obviously, I don't know what the truth is.
13 I'm just trying to go through the analysis here of -- given
14 that that's the definition of exculpatory, but the question,
15 you know, as I've indicated, I'm kind of stuck on is did she
16 have any knowledge that this benefit was coming or was she
17 just -- did it just fall in her lap and -- because if it just
18 fell in her lap because of something her mom was doing, then
19 there's a lot less of a strong argument that there is any
20 motive to lie versus if something she actively sought, and I
21 don't know.

22 MS. FELICIANO: It would still be part of a defense
23 theory. We're entitled to present our theory of defense no
24 matter how slight the evidence. It would still be a benefit
25 she received. It's still by definition exculpatory. Just

1 because --

2 THE COURT: All right. Here's what I'm going to do
3 since we're -- since we don't have this information and
4 there's no way we can get the information now. I mean, it's
5 an arguable exculpatory. I don't know whether it provides her
6 a strong motive to lie, but arguably it does, so I'm going to
7 allow you to ask the question.

8 And Ms. Fleck, it seems like, you know, now that
9 we've kind of known -- we all know exactly what she's going to
10 say, it seems like something you can very clearly and quickly
11 clear up on redirect, all right? 'Cause now we are -- like I
12 said, I wish I had information on U visas and the process and
13 whether or not the minor automatically gets it. We're not
14 going to get that right now as we sit here, so let's just move
15 forward. We all know what she's going to say. Everybody
16 knows what questions they're going to ask and what she's going
17 to say and --

18 MS. FLECK: Okay.

19 THE COURT: -- you can argue from that, all right?

20 MS. FLECK: Okay, Your Honor. Thank you.

21 MR. FELICIANO: Judge, and as to our motion for a
22 mistrial?

23 THE COURT: The motion for mistrial is denied. All
24 right. Let's bring Roxana back in and then let's bring the
25 jury in.

1 THE MARSHAL: Are you ready, Judge?

2 THE COURT: Yeah. Let's bring them in.

3 (Jury reconvened at 2:09 p.m.)

4 THE COURT: All right. Will counsel stipulate to the
5 presence of the jury?

6 MS. FLECK: The State does, Your Honor. Thank you.

7 MR. FELICIANO: Yes, Your Honor.

8 THE COURT: All right. Ms. Perez is back on the
9 stand, and Ms. Perez, I'll remind you again that you're still
10 under oath. Do you understand that?

11 THE WITNESS: Yes.

12 THE COURT: All right. Mr. Feliciano, your
13 cross-examination.

14 MR. FELICIANO: Thank you.

15 CROSS-EXAMINATION

16 BY MR. FELICIANO:

17 Q Good afternoon.

18 A Hi.

19 Q Can I call you Roxana?

20 A Yes.

21 Q Okay. Roxana, as -- as a result of this case,
22 you're able to get a certain type of immigration visa --

23 A Yes.

24 Q -- right? And that's called -- is that called
25 the U visa?

1 A Yes.

2 Q And the purpose of a U visa is to allow someone
3 who is a victim of a crime certain benefits?

4 A Yes.

5 Q And that benefit that the U visa allows is to
6 allow somebody who is in the country illegally to be here
7 legally; is that correct?

8 A To -- well, I got a work permit.

9 Q Okay. So you got a work permit, but you were
10 able to get the work permit because you were a victim in this
11 case?

12 A Yes.

13 Q So you went down and you did some paperwork, you
14 and your family went down and did some paperwork?

15 A Just my mom and -- my mom went to get the --
16 well, they sent her to get the paperwork.

17 Q Right. And they told her that --

18 A She could apply.

19 Q She could apply because of this case?

20 A Yes.

21 Q Okay. Thank you.

22 MR. FELICIANO: May I approach? I apologize.

23 THE COURT: You may.

24 BY MR. FELICIANO:

25 Q We looked at this picture a while ago. Did Mr.

1 Renteria-Novoa take this picture?

2 A If he took the picture?

3 Q He took this picture, right, the one that was --
4 the one that he sent to you, the day [inaudible]?

5 A I believe so.

6 Q Okay. Thank you.

7 THE COURT: And for the record, which exhibit number
8 is that?

9 MR. FELICIANO: I'm sorry. It's State's 11.

10 BY MR. FELICIANO:

11 Q When you first -- when you first talked about --
12 talked to your mom, you had a lot of -- a lot of pressure on
13 you, right, when you first talked about what you're talking
14 about today; is that -- is that correct?

15 A I haven't really talked to her all the details.

16 Q When you first did talk to her, though, you were
17 -- you were under a lot of stress when you -- when you did
18 finally talk to her?

19 A Yes.

20 Q You had a lot going on in your life?

21 A Yes.

22 Q You had the issue with your cousin, Yahir,
23 right?

24 A With the threats and everything?

25 Q No, you were -- you were -- you had the history

1 of kissing or doing whatever with Yahir, you were worried
2 about that?

3 A Yes.

4 Q And you were worried about the fact that you had
5 contact with Mr. Renteria-Novoa, that you had some sexual
6 contact with him as well?

7 A Yes.

8 Q So that all kind of -- fair to say kind of built
9 up inside you and it was tough for you to -- tough for it to
10 come out?

11 A Yes.

12 Q Okay. Now, before the police were called in
13 this case, you talked to a few people?

14 A Yes.

15 Q You talked to your cousin?

16 A Maritza.

17 Q Maritza's your cousin, right?

18 A Yes.

19 Q Your aunt?

20 A Yes.

21 Q And that's your Aunt Janet?

22 A Janet, yes.

23 Q You spoke to your mother?

24 A Not all the details, but --

25 Q But you did -- you did speak to her about some

1 details?

2 A Yes.

3 Q And during the time that you say all this
4 started with Mr. Renteria-Novoa up until you spoke to your
5 cousin, you never called the police or anything, anybody like
6 that, right?

7 A No.

8 Q You never told anybody else other than your
9 cousin was the first time you had told somebody?

10 A Yes.

11 Q In addition to speaking to your mother or your
12 aunt, your cousin, you also talked to -- is it a counselor?

13 A Yes.

14 Q And when you went to the counselor, the
15 counselor told you that you actually had to call the police?

16 A Yes.

17 Q Right? So you didn't really -- you didn't
18 really have a choice at that time because he was going to call
19 the police if you didn't call the police?

20 A Yes.

21 Q So that's the reason the police were called?

22 A Yes.

23 Q And when you went to see the counselor, that was
24 days after you had spoken to your aunt and told her that you
25 had -- that Mr. Renteria-Novoa was touching you?

1 A Yes.

2 Q It's a few days pass by and then she took you to
3 the counselor?

4 A Yes.

5 Q Okay. And during that time, your mother -- you
6 didn't tell your mother or she didn't tell your mother?

7 A No, she didn't tell.

8 Q You first spoke to the police in December of
9 2009?

10 A Yes.

11 Q Yeah. And you just told them that 2004 was the
12 first time that you ever been touched by Guillermo?

13 A Yes.

14 Q So that's about five years of it going on, from
15 2004 to 2009?

16 A Yes.

17 Q And you also told the police that you never had
18 any type of intercourse with Mr. Renteria-Novoa, correct? You
19 never had sexual intercourse?

20 A No.

21 Q Okay. When you went to the counselor --

22 MR. FELICIANO: Court's indulgence.

23 BY MR. FELICIANO:

24 Q When you went to the counselor, you had told
25 them that you had been sexually abused for about a year,

1 right?

2 A Yes.

3 Q You told them for about one year?

4 A Well, the threats, like that year -- past year
5 he was like threatening me more and more.

6 Q Okay. But you did tell them that you had been
7 abused for one year?

8 A Yes.

9 Q And you told them you --

10 MS. FLECK: I'm just going to object. If he could
11 just say exactly what.

12 MR. FELICIANO: She can clear it up on redirect.

13 THE COURT: Well, hang on. What is it there -- I
14 mean, is there more than one statement you're referring to
15 'cause I just --

16 MR. FELICIANO: No, right now I'm --

17 THE COURT: I want to make sure she actually
18 understands what you're talking about.

19 MR. FELICIANO: I'm talking about the Count B
20 counseling statement to the counselor.

21 THE COURT: Do you know what statement he's talking
22 about?

23 THE WITNESS: When I went to the counselor the first
24 time, took me to the counselor.

25 THE CLERK: Can she keep her voice up?

1 THE COURT: Yeah, can you speak up a little bit.

2 THE WITNESS: When I went to the counselor.

3 THE COURT: All right. Well, she seems to understand
4 so I'll overrule the objection.

5 BY MR. FELICIANO:

6 Q All right. And you told them that you had been
7 threatened for -- threatened for three years?

8 A Yes.

9 MS. FLECK: Your Honor, I -- okay. I'll clear it up
10 on redirect. No problem.

11 BY MR. FELICIANO:

12 Q And you told them that you were touched on your
13 vagina on three different occasions?

14 A Yes.

15 Q All right. You didn't tell them anything about
16 him touching your breasts?

17 A Nothing specific.

18 Q So you didn't tell them anything about touching
19 your breasts?

20 A Not all the details.

21 Q You didn't tell them anything about him licking
22 your vagina or licking your anus?

23 A No.

24 Q Or the masturbation?

25 A No.

1 Q You only told them that your vagina was touched
2 three time -- on three different occasions?

3 A Yes.

4 Q And when you spoke to your cousin, you didn't
5 tell her that you had been touched at all?

6 A Which cousin?

7 Q When you touch -- when you talked to Maritza?

8 A No, I just told her that he was threatening me.

9 Q You just told him he was threatening you but
10 nothing -- any type of -- nothing sexual?

11 A No.

12 Q Okay. And next you spoke to your aunt?

13 A Yes.

14 Q And when you spoke to your aunt, you didn't tell
15 your aunt anything about him licking your vagina?

16 A Not details, I didn't tell none of my family.

17 Q You just told them --

18 A So now I -- I don't talk to anyone in my family
19 and tell -- I don't tell them the details.

20 Q Okay. So you told your aunt just that he was
21 touching you?

22 A Yes.

23 Q Okay. But you didn't tell her any -- like you
24 said, you didn't tell her any of the specifics?

25 A No.

1 Q Okay. Once the police were called, it looks
2 like they came out December 17th that night. Does that sound
3 about right?

4 A Yes.

5 Q And they had you do a written statement?

6 A Yes.

7 Q Do you remember writing a statement for the
8 police?

9 A Yes.

10 Q They told you to write down everything that you
11 could remember?

12 A Yes.

13 Q As many details as possible, right?

14 A Yes.

15 Q And that's what you did in this -- that's what
16 you did in this case?

17 A Well, I wrote what I could remember at that
18 moment.

19 Q Well, you wrote that you were being threatened?

20 A Yes.

21 Q And that you were worried that Guillermo was
22 going to tell your family about a sexual relationship between
23 you and Yahir?

24 A My cousin, yes.

25 Q Right. That's what you were worried about, him

1 saying the sexual relationship?

2 A Yes.

3 Q That's what you wrote, a sexual relationship,
4 right?

5 A That he was going to tell my family?

6 Q Yes.

7 A Yes.

8 Q And then you wrote -- you wrote about touching,
9 that you were touched in your private parts?

10 A Yes.

11 Q All right. And you touched -- and you wrote
12 that he put his hand inside you?

13 A Yes.

14 Q But you -- when you wrote your statement, you
15 didn't say anything about him licking your vagina?

16 A No.

17 Q Or you didn't say anything about licking your
18 anus?

19 A No.

20 Q Or touching your breasts or masturbating?

21 A No.

22 Q Okay. And those are all things that you say
23 were going on at that time?

24 A Yes.

25 Q Right? But when they told you to do the

1 statement, you didn't write that in the statement?

2 A No.

3 Q Okay. After you did the written statement in
4 December, you gave a recorded statement. Do you remember
5 that, when they went to your school? We talked -- you just
6 talked about it --

7 A Yes.

8 Q -- a while ago? And that was about three weeks
9 after you had done the written statement? Does that sound
10 about right?

11 A Yeah, they went to my school around February.

12 Q That was about three weeks later?

13 A Yes.

14 Q Did you say that you and Yahir had kind of a
15 boyfriend/girlfriend-type relationship?

16 A Yeah, like it was just making out, kissing, but
17 like -- like sexual, like intercourse, we never had that.

18 Q Okay. And you say that started in 2004?

19 A '4.

20 Q Okay. So you would have been 10, turning 11
21 years old in 2004?

22 A 11, 12. 12, 2004.

23 Q So in 2004, you would have been -- what year
24 were you born?

25 A '93.

1 Q '93. So you would have been turning 11 that
2 year; is that right, in 2004?

3 A I was about 12.

4 Q When you talked to the police, you told them
5 that you only made out with Yahir, right?

6 A Yes.

7 Q And you told them that Yahir was 17 years old,
8 around 17 years old when you started seeing each other?

9 A He was -- I think that he was around 17.

10 Q Okay. And your sister knew about Yahir, you and
11 Yahir?

12 A Well, one time she saw us kissing.

13 Q And your cousin also knew about Yahir as well?

14 A Yes, Maritza.

15 Q Maritza knew?

16 A Yes.

17 Q And now, Yahir has a -- well, a wife and kids?

18 A Yes.

19 Q Also, when you spoke to them, when you gave your
20 voluntary statement at your school, you said you weren't sure
21 when the touching actually started with Guillermo. Do you
22 remember saying that?

23 MS. FLECK: If you could just reference a page and if
24 you could --

25 MR. FELICIANO: I'm sorry. Page 11.

1 BY MR. FELICIANO:

2 Q Do you remember saying --

3 MS. FLECK: I'm going to object 'cause that's not
4 what that says.

5 THE COURT: All right. If you're going to ask your
6 -- if there's any question about whether or not your
7 characterization of this statement is different from the
8 written statement, then you should probably show the witness
9 the statement.

10 MR. FELICIANO: Okay. May I approach?

11 THE COURT: You may.

12 BY MR. FELICIANO:

13 Q If you could just read that to yourself and not
14 out loud.

15 A Read it?

16 Q No, just to yourself?

17 A Oh. (Witness complies.)

18 Q Are you all done? So when they asked you, you
19 told them that you weren't really sure when it happened?

20 MS. FLECK: And Judge, I'm going to object. That's
21 -- it's -- I don't know what he's doing. Is he refreshing her
22 memory or is he impeaching her? He didn't ask the question,
23 which is, when did it start? He asks her when did it start?
24 She says 2004. What the statement specifically says is the
25 question is, when was the first time that you can remember him

1 touching you, and she says I don't -- I don't remember. Like
2 2004. Like I don't know.

3 MR. FELICIANO: Okay.

4 MS. FLECK: So it's not inconsistent with what she
5 has said today. He can't refer back to something unless it's
6 an inconsistent statement, and it's entirely consistent.

7 THE COURT: Right. So what are you doing with this
8 document?

9 MR. FELICIANO: Judge, I can question her on her
10 inter -- I'm allowed to question her on her interview, on her
11 prior statement.

12 THE COURT: Well, okay. Hang on. Are you saying
13 it's an inconsistent statement or what?

14 MR. FELICIANO: No, I'm allowed to get into her --
15 the actual substance of her interview on cross-examination.

16 MS. FLECK: Actually, he isn't. He's allowed to ask
17 her questions --

18 THE COURT: Hang on. Hang on.

19 MR. FELICIANO: I'm --

20 THE COURT: An interview out of court is hearsay
21 unless you're using it as a prior inconsistent statement. Is
22 that what you're doing?

23 MR. FELICIANO: No, I'm not -- I'm not quite --

24 THE COURT: Or are you refreshing her recollection or
25 what?

1 MR. FELICIANO: I'm not quite there, yet. I want to
2 see what her answer's going to be now that she has the other
3 question. Now, I can ask her again and then I'll impeach her
4 or refresh her memory if I need to.

5 THE COURT: Well, you need to ask her first before
6 you show her the document because I'm not sure -- I mean, Ms.
7 Fleck is right. Procedurally, you can't just show her the
8 document and ask her about it. It's hearsay. If you want to
9 get her to make a statement about it and if it's different,
10 you can use the document.

11 MR. FELICIANO: Okay. Well, I'll try asking the
12 question again.

13 BY MR. FELICIANO:

14 Q Do you remember saying that you weren't sure
15 when it happened, when the touching started? That it might
16 have happened in 2004 but you weren't sure?

17 A Well, I didn't remember like exact months and
18 day.

19 Q Okay. You don't remember the --

20 A I can remember the year.

21 Q I'm sorry?

22 A I can remember like the year when it all
23 started.

24 Q So you remember that it was -- it was 2004?

25 A Yes.

1 Q Okay. So from 2004, when the -- when the
2 touching started to the time you touched -- you talked to your
3 cousin or your aunt, all that time you didn't tell anybody
4 else?

5 A No.

6 Q All right. Now, when you talked to the
7 detective, you told him that your breasts were touched; that
8 Guillermo touched your breasts?

9 MS. FLECK: So I'm going to have to object again.

10 MR. FELICIANO: I'm just asking a question.

11 MS. FLECK: He has to ask a question --

12 MR. FELICIANO: That's my question.

13 MS. FLECK: -- and then she has to say something --

14 THE COURT: Okay.

15 MS. FLECK: -- that's inconsistent with what she --

16 THE COURT: Right. Hang on.

17 MS. FLECK: -- said before.

18 THE COURT: Hang on. All right. You can't just use
19 her to read an out-of-court statement in. The out-of-court
20 statement is hearsay unless it's an admission by a party on a
21 prior inconsistent statement or you're refreshing
22 recollection. You can't just read it in through her.

23 MR. FELICIANO: I'm not -- that's not what I'm doing.
24 I asked her -- what I'm asking her is if she told the police
25 that he touched her breasts.

1 MS. FLECK: But even that. I mean, why is he asking
2 her that? He needs to ask her is it -- did he touch your
3 breasts? If she says no, then he says isn't it true that you
4 gave a statement and there you told the detectives that he
5 touched your breasts.

6 THE COURT: Well, I mean, she's --

7 MR. FELICIANO: No --

8 MS. FLECK: It has to be inconsistent.

9 THE COURT: Hang on. All right. I mean, she's
10 already clearly testified that he's touched her breasts so I
11 don't know if he needs to ask it again, but so what -- are you
12 saying that this statement is inconsistent now or what?

13 MR. FELICIANO: No, I'm not questioning her on -- I'm
14 just -- I'm doing my cross-examination. I'm not asking her --
15 I'm not questioning her from the statement. I mean, I have
16 the statement --

17 MS. FLECK: Judge, can we approach?

18 MR. FELICIANO: I have the statement in front of me,
19 but I'm not questioning her on it.

20 THE COURT: All right. Let's everybody approach.

21 MR. FELICIANO: All right.

22 (Bench conference)

23 THE COURT: See -- all right. Hang on. I'm not --
24 hang on. I have -- I have the handicap of I don't know
25 exactly what's in that statement, but -- and maybe it's just

1 you're not phrasing it elegantly, but it sounds like
2 [inaudible] questions my concern is, I mean, you can't just
3 read the statement and say is that what you said because
4 that's what you're doing -- because it sounds like what you're
5 doing is you're literally reading the statement in the record,
6 that's a hearsay statement, and just using her as a funnel,
7 which you can't do. But I'm not sure if that's what you're
8 doing, maybe I'm misunderstanding, but that's kind of what I
9 heard from the question.

10 MR. FELICIANO: I can ask the questions differently.

11 THE COURT: Well, I mean, no, it's not the way you're
12 wording the questions. If that's what you're doing, you can't
13 just literally read her statement and say, hey, did you say
14 that, did you say -- did you say that? It's a hearsay
15 statement unless it's inconsistent and unless it's an
16 admission, usher. You know, I'm not sure what you -- what
17 you're doing here.

18 MS. FELICIANO: They're -- her statements are
19 inconsistent from one to the other and the DA got up and said
20 what did you tell the police, and then she says I didn't give
21 them all the details, so we're entitled to impeach her on what
22 she told the police initially to the next statement, which is
23 inconsistent, to the next statement, which is inconsistent.
24 If the DA wants to say, well, you didn't give them all the
25 details, then she says yes, that's the equivalent of their

1 version of introducing the hearsay. She's on the stand. He's
2 asking her about --

3 MS. FLECK: It isn't --

4 MS. FELICIANO: -- what she told --

5 THE COURT: Hang on.

6 MS. FELICIANO: -- the police. It's inconsistent
7 statements from one to the other. We can't just say
8 [inaudible] you told them, you know, things that were
9 different from your next statement because she might say no.

10 THE COURT: All right.

11 MS. FELICIANO: She's going to say that all he did
12 was he's been touching her on the back. The DA brought this
13 up and made an issue of it and said, oh, yeah, you just didn't
14 tell them in the beginning. But we're entitled to impeach and
15 show how from this statement --

16 THE COURT: No, I know what you're entitled --

17 MS. FELICIANO: -- to this statement to this
18 statement --

19 THE COURT: -- to, but I mean, it sounds --

20 MS. FELICIANO: -- it changed.

21 THE COURT: See, the problem is -- I mean, the fact
22 that even I'm confused about what you're doing --

23 MS. FELICIANO: There's not --

24 THE COURT: -- 'cause it sounds like what you're
25 doing is reading a statement. But I mean, maybe what you

1 ought to do, and you know, 'cause if I'm confused, the jury's
2 going to be confused, all right, is -- I mean -- I'm trying to
3 think of -- I mean --

4 MS. FLECK: Can I just say something quickly?

5 THE COURT: Sure.

6 MS. FLECK: The problem is, is that when they asked
7 her -- she's admitted that she didn't tell everything to
8 everyone, so --

9 MS. FELICIANO: We get to -- we get to flush that out
10 as part of our defense.

11 MS. FLECK: Why? She's -- it's not inconsistent
12 then. What she has --

13 MS. FELICIANO: We don't have to --

14 MS. FLECK: -- said when she testified is I didn't
15 tell every single person every single thing.

16 MS. FELICIANO: Okay. So --

17 THE COURT: Right.

18 MS. FLECK: She's admitted that, so what are they
19 doing?

20 THE COURT: Well --

21 MS. FELICIANO: She'd like us to stand up here and
22 accept the State's version of --

23 THE COURT: No, what you need --

24 MS. FELICIANO: -- of our cross.

25 THE COURT: Here's what I would recommend that you do

1 just to make it more clear because I'm concerned -- again, I
2 don't -- admittedly, I have the handicap. I don't have all of
3 these statements in front of me so I don't know where you're
4 going with this.

5 MR. FELICIANO: Okay.

6 THE COURT: But you know, I want the record to be
7 clear that you're -- you know, if that's what you're trying to
8 do, then you need to lay more of a foundation. And what I
9 might add -- you know, what you might want to do, you know, as
10 generally as you can do this, maybe something like, you know,
11 isn't it true that you gave different statements at a
12 different time, and if she says -- well, first of all, if she
13 says no, then first of all, you get to start going into the
14 statements, but right now all you're doing is you're just
15 reading a statement and saying, well, isn't that what you
16 said?

17 MR. FELICIANO: Well --

18 THE COURT: And that's literally like -- that's
19 coming very close to reading in a hearsay statement.

20 MR. FELICIANO: But it's different from what she said
21 at the preliminary hearing, it's different from what she said
22 in her voluntary statement. It's different from what --

23 THE COURT: Well, why don't you ask her if it's --

24 MS. FELICIANO: What she said today.

25 MR. FELICIANO: -- she said today.

1 THE COURT: -- different or not? Ask her if it's --
2 you know, and if she says no or if she says -- you know, I'm
3 not -- I'm not --

4 MR. FELICIANO: That mean -- that means I'd have to
5 do that for every single question. I mean, I don't need to
6 ask for every single question, did you say this before --

7 THE COURT: Oh, no. Let me --

8 MR. FELICIANO: -- or it's going to take forever.

9 THE COURT: -- back up for a second. How many
10 statements are there?

11 MS. FELICIANO: There's one, two, the detect --

12 MR. FELICIANO: At least five.

13 MS. FELICIANO: No, there's one to the police in
14 December, then there's the voluntary statement to the
15 detective and then there's a prelim.

16 MR. FELICIANO: And then -- well, there's not -- not
17 written, but there's the one to -- and there's to the cousin
18 and to the aunt, which we've already gone over.

19 MS. FLECK: But again, I mean, that's -- I mean, I
20 guess I'll just have to go through them all with -- as prior
21 consistent statements, but --

22 MS. FELICIANO: They're not prior consistent
23 statements because there's no charge of recent fabrication, so
24 she can't get into it that way.

25 THE COURT: Well, I mean --

1 MS. FELICIANO: I mean, they're already being gone
2 through.

3 THE COURT: -- aren't you saying that she's recently
4 fabricating it? That's your whole argument --

5 MS. FELICIANO: No, it's not a --

6 THE COURT: -- isn't it?

7 MS. FELICIANO: -- recent fabrication. The
8 fabrication occurred years ago.

9 MS. FLECK: No, if you take something out of --

10 THE COURT: Well, except -- all right. Except -- I'm
11 not bickering with you. I'm just curious because I thought
12 you said today in your opening statement that we're not even
13 sure what she's going to say today. Isn't that recent
14 fabrication?

15 MS. FELICIANO: But we -- but we're going through
16 that if she fabricated today, she has her testimony.

17 THE COURT: Right.

18 MS. FELICIANO: What we're going through is what her
19 fabrications were a year ago. The State wants to introduce
20 those statements to show years ago that they were consistent.
21 They're not consistent with what she testified to today, and
22 we're not challenging that since it's not a prior consistent
23 statement and it doesn't come in under that law.

24 MS. FLECK: It's not --

25 THE COURT: All right. I mean, okay. If she's

1 giving -- you know, again, I haven't seen the statements. I
2 didn't even know there were five. But if she's giving
3 different statements, you know, obviously they're admissible
4 as prior inconsistent statements, but you're -- you're not
5 being clear that's what you're doing. That's why -- you know,
6 again, first objection is that you -- because it kind of
7 sounds like you're just reading it and saying, hey, isn't that
8 what you said, which is --

9 MR. FELICIANO: Well --

10 THE COURT: I mean, if you're saying that they're
11 inconsistent, I mean, you're not really highlighting
12 [inaudible] I didn't get that the statements you're actually
13 reading are all that inconsistent, but if you want to --

14 MR. FELICIANO: Well, I mean, I'm -- I mean, I
15 established that we were going off the statement when she gave
16 her voluntary --

17 MS. FELICIANO: It's easier to --

18 MR. FELICIANO: -- and we're talking -- we're going
19 chronologically 'cause if I jump all around, it's going to --
20 it's going to make even less sense. So --

21 THE COURT: Well, I'm not going to tell you how to do
22 your cross. I mean, if you want to go chronologically or if
23 you want to go topic by topic, whatever, but -- I mean -- I
24 mean, the problem is -- I mean --

25 MS. FELICIANO: Is it easier to say you never told

1 Janet this? Yes. You never told your mom this? Yes. At the
2 preliminary hearing, you never told her this --

3 MS. FLECK: But the problem is she's already said
4 that.

5 MS. FELICIANO: -- that day. You never said -- can
6 you let me finish?

7 MS. FLECK: She already -- that's what she testified
8 to.

9 THE COURT: Hang on.

10 MS. FELICIANO: Can I -- can I finish? Thanks. If
11 -- I mean, if you want us to do it like that, you know, you
12 never told -- this seemed like a [inaudible] right away. I
13 think that running through all of the different statements
14 that were given for each independent thing contained in each
15 statement we'll be here until next week, if we were to get up
16 and say -- go through every single thing and then compare it
17 to all the different statements she's made. I mean, we'd
18 never --

19 MR. FELICIANO: So --

20 MS. FELICIANO: -- get out of here.

21 MR. FELICIANO: I mean, this makes it a lot -- this
22 makes it a lot more [inaudible].

23 THE COURT: Okay. Well, I guess -- I guess my
24 concern is I wasn't sure where you're going with this, because
25 again, admitting to you my handicap because I don't even know

1 what's in the statements, but -- all right. Here is what I'm
2 going to do. I mean, since that seems to be, you know, pretty
3 much your whole defense, that she's changed her story over
4 time, I'll let you keep going, but you know, just not
5 requiring you, but you might want to punch it up -- you know,
6 don't add a lot to it, but kind of make it more clear.
7 'Cause, again, there's parts of it that I'm not even getting,
8 so I don't know if there's a way you can, not make it longer
9 but just clarify, you know what I mean?

10 MR. FELICIANO: Okay.

11 THE COURT: 'Cause if I'm not getting it, I'm pretty
12 sure they're not getting it, you know.

13 MR. FELICIANO: Okay.

14 THE COURT: All right. But I'll give you some room
15 on it. All right.

16 MR. FELICIANO: Thank you.

17 (End of bench conference.)

18 MR. FELICIANO: Can I have the Court's indulgence for
19 a moment?

20 THE COURT: Sure.

21 MR. FELICIANO: Okay. Sorry about that.

22 BY MR. FELICIANO:

23 Q Okay. So we're back to the statement that you
24 gave to the -- at your school, you remember that, on -- in
25 January of 2010? We're still talking about that. You said

1 that Guillermo would touch your breasts, right?

2 A Yes.

3 Q And you said that he would do that when other
4 people were home; is that correct?

5 A Yes. When no one's looking around.

6 Q Okay. So other --

7 A [Inaudible] there and he's not going to do it
8 obviously not in front of people. When they were like doing
9 something else.

10 Q Okay. So other people would be home, they would
11 just -- would be in a different -- maybe in a different part
12 of the --

13 A Yeah, different --

14 Q -- of the house?

15 A -- part of the apartment.

16 Q Okay. And do you remember talking to him about
17 the last time that you were -- that you were touched?

18 A Who?

19 Q When he specifically asked you -- about to tell
20 you about the last time?

21 A With Detective Jaeger.

22 Q Detective Jaeger, yeah.

23 A We didn't talk about the details. Like he would
24 ask me questions and I would just answer. Like we didn't -- I
25 didn't tell him details.

1 Q Okay. So when he talked to you, though, isn't
2 that something that he told you to do is to give him the
3 details; that's what he was there for, to get details from you
4 about the case?

5 A Yes.

6 Q And he asked you specifically what Guillermo
7 did, right, things that he did to you?

8 A I told him what happened.

9 Q Okay. Okay. So you told him when -- you told
10 him the last time that he touched you, that he had touched
11 your butt and your breasts. Do you remember telling him that?

12 A My butt and my breasts?

13 Q Yeah, the very last time that you had any
14 contact with Guillermo, which was, you said, in --

15 A 2000 --

16 Q Was it a month before or so, before you told
17 your cousin?

18 A Yes.

19 Q Okay. So that would have been in November of
20 2009?

21 A Yes.

22 Q So something happened in November of 2009 that
23 you told the police about?

24 A If I told the police the last time?

25 Q Yeah, you told them about the last time that you

1 saw Guillermo --

2 THE COURT: Hang on a second.

3 BY MR. FELICIANO:

4 Q -- and something happened?

5 THE COURT: I'm sorry. Ms. Perez, can you speak up a
6 little bit? My court recorder is indicating she's not picking
7 up everything that you're saying, okay?

8 THE WITNESS: Okay.

9 THE COURT: Thanks. Can you repeat your last answer?
10 Maybe you can repeat the question.

11 MR. FELICIANO: Okay.

12 THE COURT RECORDER: I got that.

13 THE COURT: You got -- you got the last one? Okay.
14 Thanks.

15 Go ahead.

16 BY MR. FELICIANO:

17 Q So the only thing that you told them is that he
18 touched your butt and he touched your breasts, right? You
19 didn't tell them that he did anything else?

20 A No --

21 Q Okay. You didn't tell them --

22 A -- details.

23 Q I'm sorry?

24 A I didn't tell details.

25 Q Okay. The details about licking your vagina --

1 A Yeah.

2 Q -- and licking your anus?

3 A Yes.

4 Q Okay. And on that day, you did say that his
5 fingers went inside of you?

6 A He put his hand on my vagina.

7 Q And also, when you talked to Detective Jaeger,
8 he asked you specifically if there were certain things that
9 you didn't want to talk about, right, like things that you
10 might have been embarrassed to talk about?

11 A Yes.

12 Q And he gave you a chance to explain that if
13 there was anything that you were embarrassed about, that you
14 could tell him?

15 A If he gave me time to explain?

16 Q He gave you a chance -- he explained to you that
17 if you were embarrassed, it was okay and to talk about
18 whatever you wanted to talk about?

19 A Yes.

20 (Pause in proceedings)

21 BY MR. FELICIANO:

22 Q And when you were asked, you said that no, you
23 were just touched and you were harassed?

24 A Yes.

25 Q Right? And so you didn't say anything about the

1 -- about the other things that you've talked about today?

2 A No.

3 Q When you finally decided to tell your cousin,
4 you told Detective Jaeger that you did that because you were
5 tired of him bothering you?

6 A To my cousin?

7 Q Maritza?

8 A Well, she -- we were at work and she told me
9 that he had called her to tell -- and he told her to tell me
10 to pick up the phone if I didn't want things to get worse, so
11 I -- she told me that and she started asking me if he was like
12 doing anything to me, so I started crying and then I told her
13 that he had -- that he's been threatening me, but -- like I
14 didn't say details like that he was touching me.

15 Q You just said that he was threatening you?

16 A Because I didn't want to tell her 'cause I was
17 embarrassed --

18 Q Okay.

19 A -- to tell my family.

20 Q And you were tired of him -- you were tired of
21 all the calls?

22 A Yeah.

23 Q And tired of all the texting?

24 A Yes. And I'm tired of him touching me.

25 Q Okay. Now, although -- although he called you,

1 there were times when you called Guillermo as well, correct?

2 A I didn't call him often.

3 Q But there were times that you --

4 A But he -- yeah, sometimes I would call, but he
5 was the one that would call me. When he started threatening
6 me more and more, he would call me lots of times. Like after
7 school, like there was times that I didn't answer the phone,
8 and sometimes like when I knew he was going to be waiting for
9 me, like I would go like take -- walk slower from the bus stop
10 so like he would get tired of waiting for me, and I wouldn't
11 answer the phone. And then when I got home, he would call the
12 house, he would call my cell phone.

13 Q And you would --

14 A I wouldn't answer the house phone.

15 Q There were times that you would call him,
16 though, right?

17 A To come to the house?

18 Q That you would call him on the phone?

19 A I would call him sometimes, but like I wouldn't
20 call him to tell him to come over the house.

21 Q But you like -- he had your -- you gave him your
22 cell phone number at some point when you got your cell phone?

23 A Well, I don't -- like he would ask me, oh --
24 like he knew I had a cell phone so obviously he wanted the
25 number.

1 Q So you gave it to him? So you just gave him
2 your cell phone number, right?

3 A I don't remember if I gave it to him or if he
4 found -- or if he got it from someone else.

5 Q Okay. Now, when you spoke to Detective Jaeger,
6 you told him there would be different -- some of the things
7 were going to change from the time you gave your written
8 statement, to the time that you gave your recorded statement.
9 Do you remember talking to him about that?

10 A He asked me if there was something I wanted to
11 talk or add.

12 Q Okay. And do you remember what that was?

13 A Well, what I wanted to tell him was that -- that
14 like I did have something with my cousin, but like I didn't
15 have anything like intercourse -- intercourse with -- with my
16 cousin.

17 Q Okay. Is that because in the -- when you first
18 gave the written statement and it says sexual relationship, is
19 that what you were concerned about, that you wrote sexual
20 relationship?

21 A With my cousin?

22 Q Yeah, when you -- when you wrote that in your --
23 in your written statement before, the time before when the
24 police first went to your -- to your house?

25 A I don't --

1 Q Okay. That's okay. That's a bad question. So
2 you just wanted to clear up that you didn't have a sexual
3 relationship with --

4 A Yeah, that I didn't --

5 Q -- your cousin?

6 A -- have intercourse. Like I did -- I did have
7 like kissing and making out, but like intercourse with my
8 cousin, I didn't have nothing with him. There was no like sex
9 with him.

10 Q And Yahir was upset about all of this coming
11 out?

12 A I didn't really talk to him. Like I didn't see
13 him a lot. I haven't like -- we never talk about it.

14 Q Okay. So after your -- after you gave that
15 statement, you came to court and you testified kind of like
16 you're testifying here today, right? You remember that?

17 A Yes.

18 Q You remember testifying in court before?

19 A Yes.

20 Q Okay. And now, that was in -- that was
21 September 17th of 2010. That was about nine months after you
22 had spoken to Detective Jaeger; does that sound about right?

23 A Yes.

24 Q Now, when you testified at the preliminary
25 hearing, you said that you were 11 years old when the touching

1 had started. Does that sound correct?

2 MS. FLECK: And again, I'm going to ask that he --

3 A 11, 12.

4 MS. FLECK: -- reference pages and reference like the
5 lines and -- to ask her what she said a year ago in a
6 statement and expect her to remember that, that's why he needs
7 to reference some document.

8 THE COURT: Do you know which statement he's talking
9 about, or are you unclear?

10 THE WITNESS: About --

11 THE COURT: Which prior statement --

12 THE WITNESS: -- when --

13 THE COURT: -- he's talking about?

14 THE WITNESS: When I came to court --

15 THE COURT: All right. Well, for the --

16 THE WITNESS: -- the first --

17 THE COURT: -- record, if nothing else, you might
18 want to tell the document, the name of the document and the
19 page number. She seems to understand, but just so the record
20 is clear.

21 MR. FELICIANO: Can we approach?

22 THE COURT: Sure.

23 (Bench conference)

24 MR. FELICIANO: So do I need to call out a page
25 number for each question that I ask?

1 THE COURT: Well, I mean, look.

2 MR. FELICIANO: It's going to take a --

3 THE COURT: I'm not requiring you to do so, but it's
4 going to be all messed up [inaudible] what you're talking
5 about is the problem.

6 MR. FELICIANO: I'm just referring to the --

7 THE COURT: I don't know that you care, but I mean,
8 you're the one who should be protecting the record. I don't
9 --

10 MR. FELICIANO: Okay.

11 THE COURT: I don't care either way. I'm just making
12 a suggestion.

13 MR. FELICIANO: Okay.

14 THE COURT: But she seems to understand what --

15 MS. FLECK: No, but --

16 THE COURT: -- you're talking about.

17 MS. FLECK: -- here's my objection. Again, he cannot
18 continually say isn't it true you said this at prelim or that
19 at prelim. I mean, he has to -- it has to be something
20 inconsistent --

21 THE COURT: But if she says yes --

22 MS. FLECK: -- and then --

23 THE COURT: -- I said that, then -- I mean, if she's
24 clear.

25 MR. FELICIANO: If she's clear, I mean --

1 THE COURT: I mean, the record's not --

2 MS. FLECK: But --

3 THE COURT: -- going to be clear, but if she's clear,
4 then what's the -- what's the problem?

5 I'm sorry?

6 MS. FLECK: But then if it's an inconsistent
7 statement, he's supposed to be impeaching her.

8 MR. FELICIANO: I don't need to -- I -- she
9 testify --

10 MS. FLECK: He's supposed to be going up and showing
11 it --

12 THE COURT: Hang on. Hang on.

13 MS. FLECK: -- to her.

14 THE COURT: One at a time. All right.

15 MR. FELICIANO: She testified, said she was 13 --

16 THE COURT: She testified what? I can't hear you.

17 MR. FELICIANO: That she was 13.

18 THE COURT: Okay.

19 MR. FELICIANO: So it's inconsistent.

20 MS. FLECK: So the proper way to impeach her is to
21 say today you've testified that it was -- you were 13. Now,
22 do you remember going to a preliminary hearing, reference page
23 whatever.

24 MR. FELICIANO: I don't --

25 MS. FLECK: Yes, you do.

1 MR. FELICIANO: I don't need to do that. There's no
2 magic -- there's no magic formula for it.

3 MS. FLECK: Yeah, you do because --

4 THE COURT: Well --

5 MS. FLECK: -- he can just be making it up, and I
6 don't know where he's referring to so --

7 THE COURT: Yeah, but the problem --

8 MS. FLECK: -- I'm going to --

9 THE COURT: But if she says yes, if she's agreeing,
10 then if she understands what he's talking about, I mean even
11 if you don't, I mean granted the record's pretty unclear
12 'cause no one else --

13 MS. FLECK: Okay. Well, then I'm going to continue
14 to ask --

15 THE COURT: -- knows what you're talking about.

16 MS. FLECK: -- each time for a page number because I
17 don't know what he's referring to, and for him to just be
18 taking stuff out of her preliminary hearing transcript that I
19 can't remember. I can't remember where it is. I have a right
20 to know what he's impeaching my own witness with.

21 MS. FELICIANO: But it's -- [inaudible] is not
22 impeaching if she remembers.

23 MS. FLECK: Well, then just reference the page.

24 THE COURT: Well, then just -- yeah, it takes like --
25 it takes like a second to say it. Why don't you just say the

1 page number -- you know, what page it's [inaudible]. I mean,
2 that way she can follow along. It'll just take a second,
3 right?

4 MR. FELICIANO: Okay.

5 THE COURT: Or am I wrong? Is it going to take -- is
6 it going to be really complicated?

7 MR. FELICIANO: Well, it's just -- I mean, we can get
8 through this if I can just ask my questions and be done. I
9 mean, this is the last section I have as far as the rape
10 [inaudible].

11 MS. FLECK: I'm going to ask that he --

12 THE COURT: Well, I mean --

13 MS. FLECK: It's --

14 MR. FELICIANO: Well, I --

15 THE COURT: -- what she's -- what she's saying is
16 she's having trouble following along because she can't find
17 the pages.

18 MR. FELICIANO: Well, I'm sorry that she can't find
19 the pages.

20 THE COURT: I'm asking you to say the page numbers,
21 okay?

22 MR. FELICIANO: Okay. If you're asking me --

23 THE COURT: Because if nothing else, the record's --

24 MR. FELICIANO: -- don't --

25 THE COURT: -- horrible right now. I mean, I'm

1 surprised you're not going to -- [inaudible] a better job of
2 protecting the record. It's horrible right now because no one
3 knows what you're talking about. It's sort of -- you and the
4 witness do, but it's not in the record.

5 MR. FELICIANO: Okay. If you're ask -- I'll say the
6 page numbers.

7 THE COURT: All right.

8 (End of bench conference.)

9 BY MR. FELICIANO:

10 Q You were living at the University Apartments
11 when the touching occurred, right, the second University
12 apartment?

13 A Yes.

14 MR. FELICIANO: Page 10.

15 BY MR. FELICIANO:

16 Q And you moved into that apartment in 2000 --
17 beginning of 2005; that's when you moved into the second
18 University apartment?

19 A In 2005.

20 Q Okay. So between that time -- he started
21 touching you, you said, in the second apartment?

22 A Yes.

23 Q Okay. So that would have been in 2005?

24 A 2005.

25 Q Okay. So not 2004?

1 A We move in 2004 to the first University
2 apartments.

3 Q Okay. And the touching started in 2005?

4 A When -- when -- right when we moved to the third
5 bedroom.

6 Q I'm sorry?

7 A When we moved to the third bedroom.

8 Q The third -- that was --

9 A The second University.

10 Q The second apartment, okay. Okay. Do you
11 remember saying that the touching started when you -- in 2004
12 at the preliminary hearing? Would you like to --

13 A 2004.

14 Q 2004. And you testified that nobody ever saw
15 Guillermo touching you, that nobody ever walked in or anything
16 like that?

17 A No.

18 Q Okay. Although he would touch you when people
19 were home?

20 A Yes.

21 Q Okay. So you've given the state -- you talk to
22 your cousin, you talk to your aunt, you've given the written
23 statement with the police. Then you have given the recorded
24 statement with the police, then you -- the preliminary hearing
25 is when you first talk about him licking your anus; is that

1 correct?

2 A I talked about it with Stacy.

3 Q Stacy, the district attorney?

4 A When I was here the first time at court.

5 Q Okay. So you spoke with it about -- that was
6 the first time you had told somebody?

7 A Well, the -- all the details.

8 Q Okay. So but before that -- before that day,
9 you hadn't said anything about him licking your vagina?

10 A Before what day?

11 Q The day of the preliminary hearing?

12 A I had talked about it with Stacy.

13 Q Do you remember when that was?

14 A Before court, like days before court.

15 Q Okay. So that's the first person that you told
16 that --

17 A Like all the details.

18 Q Okay. And the same thing with licking your
19 anus, Stacy is the first person that you told?

20 A All the details, everything he would do to me.

21 Q Okay. So it sounds like every time that you're
22 around Guillermo, the same -- it happened the exact same way.

23 A He would basically do the same things over and
24 over again.

25 Q Okay. The exact same way each time?

1 A He would basically the same.

2 Q Okay. So the same thing, the same type of thing
3 happened again, exactly the same at the same apartment, at the
4 University apartment?

5 A Exactly the same?

6 Q The same type of touching and the same type --
7 the same type of things that you said that he did before?

8 A He would do it like every time he could. He
9 would do -- he would touch my vagina, my anus. He would lick
10 my vagina, touch my boobs, everything.

11 Q And that was each -- that was each and every
12 time that --

13 A Every time that he would want to do that.

14 Q Okay.

15 A And there was -- when there was no one around.

16 Q And the same -- when you moved to Andover, the
17 same thing -- the Andover apartment, the same things happened?

18 A Yes.

19 Q Now, today you testified that you put your hand
20 -- that you would actually put your hand on his penis?

21 A He would tell me to touch his penis.

22 Q All right. Did you testify today that you
23 actually put your hand on his penis?

24 A Yes.

25 Q Okay. Today, is that -- that's the first time

1 we're hearing that. That's the first time you've said that,
2 right?

3 A I don't think so. I think I said it before.

4 Q Do you remember when you said it before?

5 A Well, I -- I talked -- I remember talking about
6 it with Stacy.

7 Q Okay. But you never said it in any of the
8 previous statements that you gave?

9 A I think the time I came in court the first time.

10 Q If you remember. If you don't remember, it's
11 fine. So when you moved to the Tamarus Apartments, you said
12 nothing was going on?

13 A He would go over and visit and he would call,
14 but my mom -- my mom, she would be there with me or my cousin.
15 He would go after work in the afternoons and my mom would be
16 there.

17 Q So there was somebody always home?

18 A My mom or my cousin.

19 Q And again, when you moved -- then you moved to
20 Southern Cove and things started up again?

21 A Yes.

22 Q All right. And again, it was the exact same
23 type of conduct that we were talking about?

24 A Yes.

25 Q Okay. And the last place that anything

1 happened, that was at Riverbend?

2 A Yes.

3 Q Okay. And again, that was the exact same type
4 of contact?

5 A Yes.

6 Q Okay. Now, your cousin was the one that told
7 your aunt that -- about the threats?

8 A Yes.

9 Q All right. So you did talk to your aunt about
10 what was going on?

11 A She went to my house one time and she asked me
12 -- she told me that Maritza had told her what happened at
13 work, so then she ask -- she started to ask me --

14 Q And she asked you about -- you talked to her
15 about Yahir?

16 A Yes.

17 Q And you told her that you were just sitting on
18 his legs. Does that sound correct?

19 A The one time he saw us we were sitting -- I was
20 sitting with my cousin.

21 Q Right. But sitting -- I guess sitting on top of
22 his legs; is that --

23 A Yes.

24 Q -- what you told her?

25 A I told her that he hadn't seen us.

1 Q Now, we went over the text messages that you got
2 from Guillermo. Now, all the text messages that you received,
3 none of them talked about like anything sexual, right?

4 A No. It just said that he wasn't going to leave
5 me alone until I answer the phone.

6 Q Okay. And he left you voice mails, too, the
7 same type of messages?

8 A Yes.

9 Q All right. To answer the phone, pick up the
10 phone, things like that?

11 A Yes.

12 Q Okay. Nothing about anything sexual or any
13 touching or anything like that?

14 A No.

15 Q Now, when he would call, you had -- you would
16 answer the phone certain times, right?

17 A Yes. Not all the time.

18 Q Okay. So you knew he was actually -- you knew
19 he was calling 'cause you could see his number pop up, right?

20 A Yes.

21 Q But you would still answer the phone?

22 A Sometimes I would, sometimes I wouldn't 'cause
23 he would call lots of times, and I wouldn't answer 'cause I
24 know what he wanted. And sometimes, like he would call lots
25 of times.

1 Q Okay. So sometimes when he would come over, you
2 would let -- you would actually let him in the apartment if
3 he'd knock on the door?

4 A Well, he would go over to the house, so he would
5 knock the door. And sometimes he would -- he would wait for
6 me outside the house.

7 Q But sometimes he would knock on the door and you
8 would just let him in?

9 A Because he was threatening me that he was going
10 to go tell my family.

11 Q Okay. 'Cause he was threatening you.

12 A If I don't -- if I didn't open the door, then
13 obviously he was going to go tell my family.

14 Q And there were times where you told him to stop
15 doing what he was doing and he would stop what he was doing?

16 A Well, when he had me in the bed, like he would
17 go like for 10, 15 minutes, 20, and then I would tell him like
18 to stop already.

19 Q And then he would stop at that point?

20 A Yeah, sometime he will stop or sometime he would
21 be oh, five more minutes.

22 Q Okay. Now, throughout the time that you've
23 known Guillermo, he's bought you certain gifts, right?

24 A Yes.

25 Q He bought you a cell phone?

1 A Yes.

2 Q And you'd -- you'd actually asked him to buy you
3 things, right?

4 A Well, I told him to buy me stuff.

5 Q Okay. You would -- you would tell him to buy
6 you things and he would?

7 A Well, not all the time, sometimes he would.

8 Q Okay. So he bought you things like a cell
9 phone, he'd buy you clothes?

10 A Yes, but not often.

11 Q Okay. And he'd buy you things like shoes?

12 A Yeah.

13 Q And backpacks and things like that?

14 A Yes.

15 Q All right. And what other things would he buy
16 you?

17 A Like just clothes, shoes.

18 Q Okay.

19 MR. FELICIANO: Court's indulgence.

20 BY MR. FELICIANO:

21 Q We -- I talked to you before -- right when I
22 first started talking, you were talking about the visa that
23 you got. As a result of this case your mom also got a visa
24 too, right?

25 A Yes.

1 Q And that's, again, because of the -- 'cause of
2 this case, she was able to get a visa and stay here?

3 A Yes, 'cause they told her that she could go
4 apply and -- well, at first she didn't want to 'cause she was
5 scared that she was going to be deported or something, so it
6 took her months to decide if she wanted to or not.

7 Q Okay. But she did eventually apply and get the
8 visa?

9 A First, she went to talk to a lawyer to see what
10 possibly was there if we could get the -- the visa.

11 Q Okay. Thank you.

12 THE COURT: Any redirect?

13 MS. FLECK: Yes. Thank you.

14 REDIRECT EXAMINATION

15 BY MS. FLECK:

16 Q Okay. Are you doing okay? Long day, I know.
17 Okay. Let's just get the whole visa thing out of the way to
18 begin with. When was it that you were given -- well, first of
19 all, did you have anything to do with applying for a visa to
20 stay in the country?

21 A If I had anything to do?

22 Q Did you have anything to do with that or did
23 your mom --

24 A Well, my mom, she was the one that had the
25 papers.

1 Q Okay. And were you encouraged to do that so
2 that you could stay and testify as a victim in a sexual
3 assault case?

4 A I --

5 Q Were you encouraged to do that because you
6 needed to stay for try -- for a trial?

7 A Well, I don't -- my mom, they told her that she
8 could apply.

9 Q Okay. So basically, bottom line, did you have
10 anything to do with getting that?

11 A If -- if I told like my mom to go apply for
12 or --

13 Q Or did you have anything to do with applying for
14 it?

15 A No. Well, my mom, she's the one that went and
16 did all the paperworks and like she went to ask the lawyer and
17 everything.

18 Q Okay. When was it that you got the visa to stay
19 here to work?

20 A Like the beginning of the year of 2011 or --

21 Q The beginning of 2011?

22 A I don't really remember what year.

23 Q Okay. So over a year after you first talked to
24 the police about this?

25 A Yeah. I took a year or I don't remember, more

1 than a year to get like all the paperworks.

2 Q Okay. But it wasn't for -- it was over a year
3 when you got an actual visa to stay and work?

4 A Yeah, like around a year.

5 Q Okay. And then when you testified at
6 preliminary hearing, that was in September of 2010, correct?

7 A Yes.

8 Q So five months before this visa ever became an
9 issue?

10 A Well, I don't remember when my mom went to do
11 all the paperworks.

12 Q Okay.

13 A It took her months to decide if she was going to
14 like apply for it 'cause she was scared to go apply.

15 Q Okay. Okay. Let's then talk about, first, this
16 conversation -- or the time that you went to meet with the
17 counselor. Had you ever met this counselor before?

18 A No.

19 Q When you went, you said that Jeimi was in the
20 room with you?

21 A Yes.

22 Q Okay. And so you told Mr. Feliciano when he was
23 just talking to you, that you basically said that you had been
24 abused for the -- for one year?

25 A Yes.

1 MS. FLECK: And Judge, can I approach?

2 THE COURT: Sure. Mr. Feliciano, do you know what
3 document she's showing the witness?

4 MS. FLECK: It's the --

5 MR. FELICIANO: Yes, I do. Thank you.

6 BY MS. FLECK:

7 Q So I just want you to read this statement here
8 and tell me if that refreshes your memory as to what you told
9 the counselor.

10 A I don't understand that.

11 Q Yeah, and actually, it's the -- you can hardly
12 even read the handwriting so let me just ask you. The
13 counselor went on to say that you had told him that you were
14 sexually abused for the past --

15 A For the past --

16 Q -- year, and that you had been threatened by
17 your mom's boyfriend since you were 13. Tell me what you told
18 the counselor in terms of what had happened with the defendant
19 and for how long?

20 A Well, I told him that he threatened me, that he
21 had threatened me and -- and had been going -- it was been
22 going on since when I was 12. I was much little.

23 Q Okay. I'm sorry, sweetie. And I know it's been
24 like such a long day, but can you just speak up a little bit
25 and just try to -- we're not going to go on that much longer,

1 I promise.

2 Okay. So you told him that you had been threatened
3 since you were 13 years old, right?

4 A Yes.

5 Q And that was by Guillermo --

6 A Yes.

7 Q -- is that right? Did you ever say that it had
8 only happened for one year?

9 A I think I meant to say like the past years, not
10 year.

11 Q Okay. Did you ever say to him it only happened
12 for one year?

13 A I don't remember saying one year.

14 Q All right. When you told him -- you told him
15 that you were digitally penetrated, right, that he used his
16 fingers to --

17 A He put his fingers.

18 Q -- put his fingers inside you, you told him
19 that; is that right?

20 A Uh-huh, yes.

21 Q Is that a "yes"?

22 A Yes.

23 Q Okay. And then you told him that it happened on
24 three occasions? I mean, do you -- I don't expect you to
25 remember every single thing you told him, but --

1 A No, I don't remember three occasions.

2 Q Pardon me?

3 A I don't remember like saying three occasions.

4 Q Okay.

5 A But I guess that's what he wrote down.

6 Q Okay. Tell me how you were feeling during that
7 interview with the counselor.

8 A Well, I was embarrassed. My cousin, when I --
9 she was sitting next to me.

10 Q Okay.

11 A So I didn't want her -- I was embarrassed 'cause
12 she was listening to what -- to what I was saying.

13 Q Okay. How long did that time with the counselor
14 last?

15 A Like an hour. I don't --

16 Q All right. So --

17 A Probably an hour.

18 Q So then you go on to talk to the police and
19 that's on December 17th of 2009. Do you remember that?

20 A Yes.

21 Q You then gave a written statement, three pages,
22 as to what had happened?

23 A Yes.

24 Q And you told the officer at that point in time
25 that you were being harassed by the defendant and that he was

1 going to tell your family that you had a sexual relationship
2 with your cousin?

3 A Yes.

4 Q You told them that he leaves you voice mails and
5 that if you don't answer the phone, he's going to start
6 talking to your family and telling your cousin's wife things.
7 Do you remember writing that down?

8 A Yes.

9 Q You told him about him taking your two pairs of
10 underwear from the cabinet --

11 A Yes.

12 Q -- and sending you messages?

13 A Yes.

14 Q You told him that he -- that he would wait for
15 you after school. Do you remember that?

16 A Yes.

17 Q That you --

18 MR. FELICIANO: Judge, I'm going to --

19 BY MS. FLECK:

20 Q You specifically said --

21 MR. FELICIANO: -- object to leading at this point.
22 We're on redirect.

23 THE COURT: All right.

24 MS. FLECK: And now it's all prior consistent
25 statements. He has put her --

1 MS. FELICIANO: Can we approach?

2 MS. FLECK: No, he's put --

3 THE COURT: Yeah, you can approach.

4 MS. FELICIANO: Thanks.

5 THE COURT: Hang on. Let's --

6 (Bench conference)

7 MS. FLECK: They have specifically --

8 THE COURT: Right. I mean, she's leading her -- the
9 -- her statements that you've previously crossed her on. I
10 don't know that that's actually leading. She's leading, the
11 same as saying isn't this the rest of what you said?

12 MS. FELICIANO: Well, she's on -- she's on redirect.
13 She has to ask her what she said. She was leading her by just
14 reading her testimony.

15 THE COURT: I can't hear you. I'm sorry.

16 MS. FELICIANO: She's leading her through it by must
17 reading her her testimony. She's cross-examining her. If she
18 wants to redirect her and ask her a question, that's fine.
19 It's not coming in as a prior consistent statement because, as
20 we said before, that's only after a charge of recent --

21 MS. FLECK: No.

22 MS. FELICIANO: -- fabrication.

23 MS. FLECK: Or --

24 MS. FELICIANO: And can -- if I can just --

25 MS. FLECK: Or improper --

1 MS. FELICIANO: -- finish --

2 MS. FLECK: -- influence.

3 THE COURT: Hang on. Hang on. One at a time.

4 MS. FELICIANO: Thank you. And there's been no
5 charge of recent fabrication. This occurred years before, so
6 it's not a proper prior consistent statement to then allow her
7 to sit there and read her testimony in.

8 MS. FLECK: But consistent with declarant's testimony
9 and offer truth by an expressed or implied charge against the
10 declarant of recent fabrication or improper influence or
11 motive. They have just put at issue the fact that she has
12 used this U visa as a way of somehow fabricating --

13 MS. FELICIANO: No.

14 MS. FLECK: -- and a motive to lie.

15 THE COURT: Right. And the other thing is, you know,
16 under the caselaw, recent doesn't necessarily mean recent as
17 in like 30 minutes ago or three days ago. It's recent as in
18 since that she gave the prior statements. If the prior
19 statement [inaudible] is 15 years ago and she gave another
20 statement 14 years ago, you know, under the caselaw, that's
21 technically recent because it's -- you know, it puts things in
22 context. It's not recent as it has to be within in the last
23 like six months.

24 But the question is I don't know what the timing of
25 the statement you're asking for -- are you asking -- 'cause,

1 again, I don't know how many statements there are. Are you --
2 is the statement you're particularly questioning her on right
3 now is when did that occur relative to the statements that he
4 asked about?

5 MS. FLECK: It's one of the statements that she
6 asked --

7 THE COURT: It is one of the statements he asked
8 about. See, I have this handicap. I'm trying to put together
9 how many statements there are. All right.

10 MS. FLECK: But it's not -- it's a prior -- it's a
11 prior consistent statement to what she's testified to. I
12 mean, if they come in and say that she's made a prior
13 inconsistent, then I get to say -- come in and say, no, she's
14 made a prior consistent. Plus, they took every single
15 statement out of context entirely, so I get to come in and put
16 it into context.

17 THE COURT: All right.

18 MR. FELICIANO: Well, it's still leading.

19 THE COURT: Right.

20 MS. FELICIANO: It has to be done properly.

21 THE COURT: I was about to say the objection
22 technically is leading.

23 MS. FELICIANO: It is, yeah.

24 THE COURT: It's not about prior inconsistent
25 statement --

1 MS. FELICIANO: Right.

2 THE COURT: -- or prior consistent statement, so --

3 MS. FLECK: Okay. So then how do I -- you want me to
4 refresh her memory with it, do you want me to impeach her? I
5 mean, what do you want me to do?

6 MR. FELICIANO: She has to forget something before
7 she can refresh her --

8 THE COURT: I know. You're not --

9 MR. FELICIANO: -- memory.

10 MS. FELICIANO: Right.

11 THE COURT: I mean, she's not saying she doesn't
12 remember. She can't refresh her recollection. What I'm going
13 to --

14 MS. FLECK: No, it's not impeaching her.

15 THE COURT: What's that?

16 MS. FLECK: It's not -- it's not -- she doesn't have
17 to say she doesn't remember because he's just pulled out prior
18 in -- he's just pulled out inconsistency, so I don't then
19 impeach her with a prior consistent.

20 MS. FELICIANO: We didn't say impeachment. We
21 said --

22 MR. FELICIANO: We didn't say to impeach your own
23 witness.

24 MS. FELICIANO: We're saying it's -- yeah. We're
25 saying that it's leading, so then Michelle talked about -- or

1 sorry. Ms. Fleck talked about refreshing her recollection.
2 We said she hasn't forgotten anything so you can't do that
3 either.

4 THE COURT: Right. I mean, technically you can't
5 refresh her recollection.

6 MS. FELICIANO: Right. Until she's forgotten.

7 THE COURT: But here's what I'm going to do. I'm
8 going to overrule the objection on leading because otherwise,
9 I mean --

10 MS. FLECK: You can't get it out.

11 THE COURT: -- essentially -- yeah, otherwise you're
12 going to have to, you know, sit here for hours --

13 MS. FLECK: Well, otherwise, I'll just move to admit
14 all the statements.

15 THE COURT: And especially since -- and especially
16 since the -- since she's not exactly, you know, one of those
17 people who just expands on her answers, so I mean -- so I'm
18 going to give you a little bit of latitude because [inaudible]
19 talking about all these different statements and I don't know
20 when they were made and so, you know, it'll just kind of make
21 things a little more clear. Technically, it's leading, but I
22 think it'll be clearer because, you know, like I said, she's
23 not the kind of witness who just --

24 MS. FLECK: It's not really --

25 THE COURT: -- is going to give you this --

1 MS. FLECK: -- leading, though. It's --

2 THE COURT: -- five-minute explanation kind of a
3 thing.

4 MS. FLECK: It's really not leading. It's basically
5 saying it's you said this.

6 THE COURT: No, I know. I'm overruling the
7 objection.

8 MS. FLECK: Okay.

9 THE COURT: So --

10 MR. FELICIANO: Okay.

11 MS. FLECK: Thank you.

12 (End of bench conference.)

13 BY MS. FLECK:

14 Q Okay. So in that statement, then, to the
15 police, the written one, you also specifically told the
16 officer that he has also touched you in your private parts and
17 that he put his hand inside of you. Do you remember saying
18 that?

19 A Yes.

20 Q That you specifically said that if you wouldn't
21 let him, he would start talking about you to your family.
22 That he was going to ruin your life if you didn't answer the
23 phone. You did tell the officers that on --

24 A Yes.

25 Q -- December 12 -- 17th? Okay. Do you remember

1 talking to -- or telling the officers in your statement about
2 the cousin's party that we talked about earlier?

3 A Yes.

4 Q And on that day in December, you specifically
5 told the officers that this has been going on since about 2004
6 until now?

7 A Yes.

8 Q Okay. You talked about the last time that he
9 had touched you, which was about a month ago, which would have
10 been November of 2009?

11 A Yes.

12 Q And specifically said that he showed up at your
13 house, came to the door and that he wanted to touch your
14 boobs, your pussy and your ass, and that you told him no, not
15 to touch you. Do you remember telling them that?

16 A Yes.

17 Q You went on to tell the police that day in
18 detail that he was touching you and putting his fingers inside
19 of your private parts. Do you remember that?

20 A Yes.

21 Q And that he has done this a lot of times. You
22 also told the police that day that you want him to stop
23 bothering you. Now, that's something similar to what you told
24 Maritza, when you said in this statement, I want him to stop
25 bothering you, did that also mean stop texting you, harassing

1 you, and touching you?

2 A Yes.

3 Q We've said this many times. You did not tell --
4 the only thing that you left out of the voluntary statement on
5 the 17th is that he licked you on your vagina and he licked
6 you on your anus?

7 A Yes.

8 Q Okay. Why didn't you tell during this statement
9 that those things happened?

10 A I just -- I didn't write it down.

11 Q Okay. Is it because it didn't happen?

12 A It did happen.

13 Q Okay. So fair to say you didn't put every
14 single detail of what had happened to you from 2004 until 2009
15 in this three-page document?

16 A No. There was just a lot of stuff that --

17 Q Okay.

18 A -- I had in my mind, so...

19 Q You were then interviewed by -- actually, three
20 weeks after you gave that statement to the police, you were
21 then interviewed by Detective Jaeger?

22 A Yes.

23 Q And we talked about the fact that he came to
24 your school and got you out of class?

25 A Yes.

1 Q You told Detective Jaeger that -- when you were
2 asked when was the first time that you can remember him
3 touching you, on Page 11, and you said I don't -- I don't
4 remember. Like I'm 2004, like I don't know?

5 A Yes.

6 Q Okay. So is -- 2004 is a roundabout number as
7 to when it started happening?

8 A Yes, around 2000 -- I couldn't remember back
9 then.

10 Q So not knowing the -- not knowing the exact
11 date, were you living at the University three-bedroom when it
12 started?

13 A In 2004? In -- it started in the three-bedroom.

14 Q Okay. You told Detective Jaeger that -- on Page
15 11, that he would touch your boobs; is that correct?

16 A Yes.

17 Q And that that sometimes was inside your clothes
18 and sometimes your out -- outside your clothes?

19 A Yes.

20 Q You told him that the last time he touched you
21 was in November of 2009?

22 A Yes.

23 Q You told him on Page 13 that the last time he
24 would start -- he was following you around and that he would
25 start touching your ass and your boobs, that he asked you, oh,

1 are you ready? Do you remember telling him that?

2 A Yes.

3 Q On Page 16, that you specifically told Detective
4 Jaeger that he used his fingers to go inside of you, and
5 Detective said, Just a little bit or all the way?

6 No, all the way, and that it hurt. Do you remember
7 telling him that?

8 A Yes.

9 Q Do you remember repeatedly telling him that the
10 reason that you hadn't told anybody was because you were
11 scared, you didn't want your mom to find out, and you were
12 being threatened?

13 A Yes.

14 Q Detective asked you what finally made you decide
15 to report this time, and you said, 'Cause like I was so tired.
16 Like I was tired that he kept on bothering me. Do you
17 remember saying that?

18 A Yes.

19 Q So again, you would agree with me that really
20 the only thing that you didn't tell Detective Jaeger was that
21 the defendant used his mouth to lick your vagina?

22 A Yeah, I didn't tell him.

23 Q And you didn't tell him that he used his mouth
24 to lick your anus?

25 A No.

1 Q Okay. Now, we get to preliminary hearing, which
2 is in September of 2010, and you referenced a girl, Stacy.

3 Was that the first district attorney that you met with?

4 A Yes.

5 Q And she was the district attorney that was there
6 during your first hearing; is that right?

7 A Yes.

8 Q Okay. There you testified to everything that
9 you testified today?

10 A Yes.

11 Q And then the only additional things that you
12 said was that the defendant licked your vagina?

13 A Well, I talked -- I talked with Stacy about --

14 Q Everything that had happened?

15 A Yes.

16 Q Okay. So you went to her office and you two had
17 a meeting before you testified?

18 A Yes.

19 Q Okay. And was she the first person that you
20 told that that happened to you?

21 A Well, that was the first person I talked to with
22 all the details.

23 Q Okay. And then you went on to testify about
24 that?

25 A Yes.

1 Q All right. So you testified at preliminary
2 hearing about the fact that the defendant used his tongue to
3 lick your vagina and that he used his tongue to lick and
4 penetrate your anus. Defense counsel during cross-examination
5 said that you never talked to anyone about the fact that the
6 defendant wanted you to touch his penis, and you said, well, I
7 think I talked to Stacy about that.

8 MS. FLECK: And I'm referencing Page 41.

9 BY MS. FLECK:

10 Q So at preliminary hearing, you were asked, did
11 he ever want you to touch his penis, and you said yes. That
12 he asked you to move your hand around. That you -- you were
13 asked, "Did you actually use your hand to touch his penis at
14 Andover?"

15 You said, "He would grab my hand and put it there,
16 you know." Then go on to say that you moved it around and he
17 ejaculated.

18 "Question: Okay. Did he ejaculate? "Answer: With
19 my hand? "Question: Yes." And then you said, "No. When he
20 would -- when he would do that, he would use his hand."

21 A Yes, he would -- he --

22 Q Okay. So --

23 A -- first made me -- like he wanted to touch his
24 penis and move it around, and then like when he was about to
25 cum, like he would use his hand.

1 Q Okay. So you had actually not only talked to
2 somebody about that before, but you had testified to that?

3 A I -- yeah, I said that.

4 Q Like you remember it?

5 A Yes.

6 Q Okay. Then you go on and Ms. Collins asks you,
7 "Okay. So the day he -- the time that we're talking about
8 that he had you touch his penis, he didn't ejaculate but he
9 made him ejaculate himself," and then you say, "Yes." She
10 says, "Is that the only time that that happened?"

11 "No." And then you go on to talk about other times
12 where he would just --

13 MR. FELICIANO: Judge, I'm going to object to --

14 BY MS. FLECK:

15 Q -- put your hand out --

16 MR. FELICIANO: -- the narrative and leading --

17 THE COURT: Hang on. Hang on. Hang on. What's --

18 MR. FELICIANO: -- at this point.

19 THE COURT: I'm sorry. What's the objection?

20 MR. FELICIANO: It's leading and she's testifying at
21 this point.

22 THE COURT: Yeah, can you shorten up the question? I
23 mean, you're kind of --

24 MS. FLECK: Sure. Absolutely.

25 THE COURT: -- giving this full narrative and saying

1 if she agrees with it.

2 MS. FLECK: Okay.

3 BY MS. FLECK:

4 Q So you remember testifying about one time when
5 you actually used your hand and it touched his penis; is that
6 right?

7 A Yes.

8 Q And then you testified about another time that
9 you touched his penis, but just outside the clothes?

10 A Outside.

11 Q Okay. So there were two -- there were different
12 times. Sometimes the defendant would have you touch his
13 penis, the actual skin and masturbate him; and sometimes, it
14 was outside his clothes?

15 A Yes.

16 Q Okay.

17 MS. FLECK: Okay. I'll pass the witness.

18 THE COURT: Any recross?

19 MS. FELICIANO: Court's indulgence.

20 THE COURT: Sure.

21 MR. FELICIANO: No recross. Thank you.

22 THE COURT: All right. Is the witness excused?

23 MS. FLECK: Yes, Your Honor.

24 THE COURT: All right. Thank you, Ms. Perez. You
25 are free to go. Thank you very much.

1 Hang on a second. Let me -- all right. Let me ask
2 the members of the jury. It's now about 3:25. Do you guys
3 want to take a quick break or keep going? I know we've been
4 going for about an hour and a half now. Did anyone need a
5 refreshment break or anything like that? Raise your hand if
6 you do. Let's do it that way. All right. Let's take a quick
7 -- you want five minutes, ten minutes? Who wants five
8 minutes, who wants -- who wants five minutes, or do you want a
9 longer one? Keep it short. Who wants ten minutes? Ten
10 minutes? All right. Let's do a ten-minute break then.

11 All right. During this break, you're admonished that
12 you will -- until you begin deliberations -- hang on. Hang on
13 -- you're still under oath and not have been discharged. Do
14 not reach any conclusions about this case; do not talk to
15 anybody about this case; do not investigate any facts about
16 this case; do not do any media, press or Internet reports
17 about this case; do not talk to anyone who may be involved in
18 any way with this case; do not discuss the facts of this case
19 with each other. Please leave your badges on. There is
20 almost a hundred percent likelihood that there's another
21 witness standing in the hallway so don't talk with him or
22 don't talk about this case as you walk past them. All right?
23 Thank you. See you in ten minutes.

24 (Jury recessed at 3:23 p.m.)

25 (Outside the presence of the jury.)

1 THE COURT: All right. We're still on the record.
2 We're now outside the presence of the jury and the witnesses.
3 Is there anything that either side wanted to put on the
4 record?

5 MS. FLECK: Nothing from the State.

6 MR. FELICIANO: Nothing. Nothing.

7 THE COURT: Okay. Let's take a short break then.
8 And let me just ask. Well, we can do this off the record.
9 Just so I know, who's your next witness.

10 MR. GRAHAM: It's going to be Officer Gibson.

11 THE COURT: Okay. All right. Got you. Thanks.

12 (Court recessed from 3:24 p.m., until 3:39 p.m.)

13 (Outside the presence of the jury.)

14 MR. FELICIANO: So Judge, we're going -- we're going
15 just till 5:00 today.

16 THE COURT: Oh, you guys have a trial [inaudible].
17 What time do you actually have to leave?

18 MR. FELICIANO: Like five till, if we'd be walking
19 out of here at five till.

20 THE COURT: All right. Well, let's see how far we
21 can get. Is your next witness -- how long is he going to be?

22 MR. GRAHAM: I anticipate he's going to be pretty
23 brief.

24 THE COURT: Okay. Do you have -- all right. Well,
25 let's get started then. Let's get them -- anyone -- anything

1 that you guys want to put on the record or we just bring the
2 jury right in?

3 MR. GRAHAM: No, Judge.

4 THE COURT: All right. Let's bring them in then.

5 (Jury reconvened at 3:42 p.m.)

6 THE MARSHAL: We need to go over the -- if they have
7 any questions again.

8 Jurors, if you have a question for a witness that's
9 on the stand, before that witness is let go, you need to take
10 a clean sheet of paper in your notebook, write your juror
11 number on it, your question, and then just hold up that piece
12 of paper. I will come and get them, hand them to the Judge.
13 But you have to do it before the witness leaves the stand if
14 you've got a question for the witness that's here.

15 MS. FLECK: Judge, can we approach on that?

16 THE COURT: Sure.

17 (Bench conference)

18 MS. FLECK: Do you want to see if they had any for
19 Roxana 'cause she's still here?

20 THE COURT: What's that?

21 MS. FLECK: Do you want to see if they had any for
22 Roxana 'cause she's still here?

23 THE COURT: I don't --

24 MS. FLECK: I mean, I don't know if they -- if we
25 want to even open that up.

1 THE COURT: I don't know. It's up to you guys.

2 MR. FELICIANO: What's that?

3 THE COURT: I don't -- well, apparently, out in the
4 hallway one of the jurors said they had some question but they
5 didn't remember they were supposed to write it down. So what
6 Michelle is offering is do you want to bring Roxana in here
7 and see if they have another question or just let it go?

8 MS. FLECK: I'm -- no, I -- if they have questions
9 that somebody has specifically said, I would rather them be
10 able to ask her.

11 THE COURT: Okay. Let me ask them if they -- if they
12 do 'cause maybe --

13 MS. FLECK: Yeah.

14 THE COURT: I'm not sure why Randy --

15 MS. FLECK: Yeah.

16 THE COURT: -- exactly was talking about.

17 MS. FLECK: Yeah. Okay.

18 (End of bench conference.)

19 THE COURT: All right. Ladies and gentlemen, before
20 we bring the next witness in, I'm not exactly sure what
21 conversation you guys had with Randy out in the hallway, but
22 based on the instruction -- and nor have I had a separate
23 conversation with Randy, but based on the instruction that he
24 just gave to you, I'm wondering if one of you maybe had a
25 question for Roxana that you wanted asked. If you do,

1 apparently she's -- she hasn't left the building yet. We can
2 bring her back if there is a question. Did one of you have a
3 question or not?

4 JUROR NO. 11: I had a question.

5 THE COURT: Okay. Let's do this. Can you write it
6 down and we'll take a look at it. If it's something we can
7 ask, we'll have her brought back in here and see if she can
8 answer it; but I need to look at the question first. And
9 please put your badge number on the top.

10 All right. Counsel approach.

11 (Bench conference)

12 MR. FELICIANO: Is there two questions or just one?

13 THE COURT: It's one. It's a long one.

14 MS. FLECK: How did you know Maritza or other people
15 who knew about your relationship would not tell others in your
16 family about that relationship?

17 MR. FELICIANO: It's fine.

18 THE COURT: Do you want him to bring her back in and
19 answer that?

20 MS. FLECK: Yes, Your Honor.

21 THE COURT: Is she outside or is she down
22 [inaudible]?

23 MS. FLECK: She's right in the hall.

24 THE COURT: All right. Let's bring her back in.

25 (End of bench conference.)

1 THE COURT: All right. For the record, Juror No. 11
2 has submitted a question, and since Ms. Perez is actually
3 right out in the hallway, we're going to bring her back in
4 here for just a minute and ask this question of her, all
5 right?

6 Hi, Ms. Perez. I'm sorry to bring you back in here.
7 I know that you probably thought it was over, but first of
8 all, I want to remind you you're still under oath. You
9 understand that, right?

10 THE WITNESS: Yes.

11 THE COURT: But we had one question actually from one
12 of the jurors who wanted to follow up on something that was
13 said. I apologize for having to bring you back in here.

14 Here is the question: How did you know Maritza or
15 other people who knew about your relationship wouldn't tell
16 others in your family about that relationship?

17 THE WITNESS: About the relationship with --

18 THE COURT: With the defendant.

19 MS. FLECK: No, no, no. Judge, it's with --

20 THE WITNESS: No.

21 MS. FLECK: -- Yahir.

22 THE COURT: I'm sorry?

23 MS. FLECK: It's with Yahir.

24 THE COURT: Oh, I'm sorry. With Yahir. How did you
25 know -- you're right. How did you -- I'm sorry. My mistake.

1 How did you know Maritza or other people who knew about the
2 relationship with Yahir wouldn't tell others in your family
3 about it?

4 THE WITNESS: One time I had a talk with my cousin
5 and she talked -- like she talked to me, she told me what I
6 was doing with my cousin it was wrong and I remember that time
7 I talked to her and then I was crying 'cause I knew it was
8 wrong what I was doing with my cousin 'cause we were family --
9 we are a family. So she -- she says she -- she was not going
10 to say anything, but she said like to stop doing what I was
11 doing with him 'cause it wasn't right.

12 THE COURT: Okay. All right. Let me see a show of
13 hands. Do -- are there any other questions from any of the
14 jurors or no?

15 All right. Thank you, Ms. Perez. Again, I apologize
16 for bringing you back in here, but thank you for the
17 clarification. You're now free to go.

18 All right. State, you may call your next witness.

19 MR. GRAHAM: State calls Officer Gibson.

20 CHRISTOPHER GIBSON, STATE'S WITNESS, SWORN

21 THE CLERK: Thank you. Please be seated. Please
22 state your full name spelling your first and last name for the
23 record.

24 THE WITNESS: Christopher Gibson,
25 C-H-R-I-S-T-O-P-H-E-R, G-I-B-S-O-N.

1 THE COURT: You may proceed.

2 MR. GRAHAM: Thank you, Judge.

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q Officer Gibson, how are you employed?

6 A I'm a police officer with the Las Vegas
7 Metropolitan Police Department.

8 Q How long have you been with Metro?

9 A Three years.

10 Q Are you on any specific detail?

11 A Patrol.

12 Q Okay. And how long have you been on patrol?

13 A Three years.

14 Q Three years. I want to draw your attention back
15 to December 17th, 2009. Were you on duty on that day?

16 A Yes, I was.

17 Q At some point, were you dispatched to 3937
18 Spencer, Building 9, Apartment 28?

19 A Yes.

20 Q And what was the nature of that dispatch?

21 A It was a child molestation call.

22 Q All right. What did you do upon getting that
23 dispatch?

24 A I went to the apartment and made contact with
25 the person reporting, the caller, and --

1 Q Was that person Roxana Perez?

2 A I believe it was actually her mother. I also
3 made contact with her, with Ms. Perez.

4 Q Okay. And you made -- so you made contact with
5 the mom, and what did you do next?

6 A At that time, I asked Ms. Perez what had
7 happened and she wouldn't tell me. She wanted -- she wouldn't
8 talk to me in front of her mom and the rest of her family.

9 Q What was --

10 THE COURT RECORDER: Can you keep your voice up?

11 THE COURT: Can you speak up a little bit.

12 THE WITNESS: Yeah, I said she wouldn't talk to me in
13 front of her mom and the rest of her family.

14 BY MR. GRAHAM:

15 Q All right. What was her demeanor like? What
16 was Roxana's demeanor like?

17 A She was nervous. She seemed embarrassed about
18 what was going on.

19 Q Was her -- so her mom was also in the same room
20 when you were speaking with her at first?

21 A Yeah, her mom was there, and two other females
22 were there as well.

23 Q Okay. And what was her mom doing?

24 A Her mom was crying.

25 Q All right. What was the demeanor of the other

1 two women in the house?

2 A They just seemed upset. They weren't crying.
3 Only the mom was crying.

4 Q At some point, did you take a statement, then,
5 from Roxana?

6 A Well, at first, like I said, she wouldn't talk
7 to me so I asked her mom if it would be all right if I talked
8 to her alone, me and my partner, and then her mom said yes.
9 They left the room and then she sat down and told us what had
10 gone -- what had happened.

11 Q What did you do after you got your statement?

12 A I had her do a voluntary statement, then I did a
13 report.

14 Q Okay. Did you forward that report to anybody?

15 A Yeah, I forwarded it to sexual assault.

16 Q And why is that?

17 A 'Cause the nature of the call. She had claimed
18 that --

19 Q Actually, I'm not going to get into what she
20 told you, but was it just the nature of the claim?

21 A Yeah, it was the nature of the claim.

22 Q Okay.

23 MR. GRAHAM: Pass the witness.

24 THE COURT: Cross-examination.

25 MS. FELICIANO: Thank you.

1 CROSS-EXAMINATION

2 BY MS. FELICIANO:

3 Q You testified you've been with the Las Vegas
4 Metropolitan Police Department for three years?

5 A Yes.

6 Q So started back in 2009?

7 A Yes.

8 Q Okay. So at the time you got this call, you had
9 fairly recently started working for the police department?

10 A I was about seven months.

11 Q About seven months. And your partner that was
12 with you, was that, say, your supervising officer?

13 A It was my training officer.

14 Q Training officer. So you're going through
15 training at the time you respond to this call?

16 A Yes.

17 Q Yes. And when you got to the Spencer address,
18 Roxana was there?

19 A Yes.

20 Q And her mom, Rosa?

21 A Yes.

22 Q And you testified two other females?

23 A Yes.

24 Q Was that a woman named Jeimi?

25 A I don't remember their names.

1 Q And you had Rosa write a written statement?

2 A Yes.

3 Q And Roxana wrote a written statement as well?

4 A Yes.

5 Q The two other females that were there, though,
6 you did not get a written statement from them?

7 A No.

8 Q Okay. Did you interview them?

9 A I don't remember.

10 Q If you had interviewed them, you would have put
11 that in your police report?

12 A If I had, I would have.

13 Q So if in your incident report it doesn't say
14 anything about you interviewing the two other females that
15 were there, that'd be correct?

16 A I personally didn't. I can't speak for my
17 partner.

18 Q And this Spencer address, did you know that that
19 was not Roxana's house or was it Roxana's house?

20 A I believe it was where she lived at the time.

21 Q Okay. It was -- so Roxana did live there?

22 A That's what I understand.

23 Q And at that time, you didn't collect any
24 physical evidence from Roxana?

25 A No.

1 Q So no comforter from her bedroom?

2 A No.

3 Q No clothing from her bedroom?

4 A No.

5 Q No underwear?

6 A No.

7 Q No sheets from her bed?

8 A No.

9 Q No blanket from her bed?

10 A No.

11 Q You didn't call out, say, forensic testing to

12 test anything in the house?

13 A No.

14 Q No fingerprint testing or anything like that?

15 A No.

16 Q You're familiar with sexual assault examination?

17 A Yes.

18 Q And Roxana had made an allegation of sexual

19 abuse?

20 A Uh-huh.

21 Q Is that a "yes"?

22 A Yes.

23 Q But you did not refer her to the hospital?

24 A No.

25 Q And you did not refer her to have a sexual

1 assault examination?

2 A No.

3 Q And you knew at that time that the suspect was
4 Guillermo Renteria-Novoa?

5 A She said that that was his name.

6 Q And you also knew his address?

7 A Yeah, she gave us his address.

8 Q And you put the address in your incident report?

9 A Yes.

10 Q Okay.

11 MS. FELICIANO: No further questions.

12 THE COURT: Any redirect?

13 MS. FLECK: Court's indulgence.

14 REDIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q Officer, you're not a sexual assault detective,
17 are you?

18 A No.

19 Q And you can testify to that previously. Do you
20 know in your training and experience that sex-assault-type
21 examinations aren't done if the sexual penetration and/or
22 sexual assault is over five days old?

23 A Yes.

24 Q All right. Is that one of the reasons why you
25 didn't refer it to --

1 A Yes, it is.

2 Q -- [inaudible] hospital?

3 A Yes.

4 Q All right.

5 MR. GRAHAM: No further questions.

6 THE COURT: Thank you. Any recross?

7 MS. FELICIANO: No recross. Thank you.

8 THE COURT: All right. Is the witness excused?

9 MR. GRAHAM: Yes, Your Honor.

10 THE COURT: Thank you, Officer. You're free to go.

11 THE WITNESS: Thank you.

12 THE COURT: State, you may call your next witness.

13 MS. FLECK: Thank you. State calls Maritza

14 Moreno-Rodriguez.

15 THE COURT: Randy, let's pull up one of those chairs

16 next to this chair.

17 THE MARSHAL: Yes, sir.

18 THE CLERK: Raise your right hand, please.

19 MARITZA MORENO-RODRIGUEZ, STATE'S WITNESS, SWORN

20 THE CLERK: Please state your full name, spelling

21 your first and last name for the record.

22 THE WITNESS: Maritza Yedid Moreno-Rodriguez,

23 M-A-R-I-T-Z-A, Yedid, Y-E-D-I-D, M-O-R-E-N-O,

24 R-O-D-R-I-G-U-E-Z.

25 THE CLERK: Thank you.

1 THE COURT: All right. Counsel, you may proceed.

2 MS. FLECK: Thank you.

3 DIRECT EXAMINATION

4 BY MS. FLECK:

5 Q Good afternoon. Maritza, do you have a cousin
6 by the name of Roxana?

7 A Yes.

8 Q And how -- tell me the family relationship such
9 that she's your cousin?

10 A Roxana is my cousin because she's my mom's
11 sister's daughter.

12 Q Okay. Good. Well, which sister? Who's your
13 mom?

14 A My mom's name is Anna Yedid.

15 Q Okay. And that's Rosa's sister?

16 A Yeah.

17 Q And Janet's sister?

18 A Yes.

19 Q Okay. How -- where are you originally from?

20 A From Villahermosa Tabasco, Mexico.

21 Q And how long have you lived in Las Vegas?

22 A Here in Las Vegas, approximately I've lived here
23 for seven years.

24 Q All right. Through that time, do you spend time
25 with your Aunt Rosa and your Cousin Roxana?

1 A We lived together for some time.

2 Q During the time that you lived together, did you
3 know Rosa's boyfriend, Guillermo Renteria-Novoa?

4 A Yes.

5 Q And do you see him in the courtroom today?

6 A Yes.

7 Q Can you please point to him and describe
8 something he's wearing for the record?

9 A It's him right there (indicating). The guy with
10 the -- I'm not sure what colored shirt he -- a pink-colored
11 shirt.

12 Q Okay.

13 MS. FLECK: Let the record reflect identification of
14 the defendant.

15 THE COURT: The record will so reflect.

16 BY MS. FLECK:

17 Q When did you live with Rosa and Roxana?

18 A I lived with them approximately for a year.

19 Q And where was that?

20 A At Maryland and Flamingo at some apartments that
21 are called University Park, and I can't remember the rest of
22 it.

23 Q Did the defendant live there also?

24 A He lived there as well.

25 Q What was the relationship -- what was your

1 relationship like with the defendant when you all lived
2 together?

3 A Well, it was very respectful. He never was
4 disrespectful towards me.

5 Q Through the years, fair to say that Rosa and the
6 defendant were on again, off again?

7 A Yes.

8 Q Through those years, did you sometimes see the
9 defendant?

10 A Yes, because there was some time when my aunt
11 moved that for a while he stayed and rented a room from my
12 apartment there.

13 Q Okay. Throughout those years, would he
14 sometimes also call you on the phone?

15 A Yes.

16 Q I want to direct your attention to November of
17 2009.

18 A I'm sorry?

19 Q I want to direct your attention to November of
20 2009.

21 A Okay.

22 Q Specifically, November 29th of 2009.

23 A Okay.

24 Q Did you get a phone call from the defendant that
25 day?

1 A Yes.

2 Q And where were you when you got a phone call?

3 A I was getting off of work.

4 Q Where were you working?

5 A At Subway.

6 Q Was this the same Subway that Roxana worked at?

7 A Yes.

8 Q And her mom?

9 A Uh-huh, the one that's located on Tropicana and
10 Maryland.

11 Q When the defendant called you that day, did he
12 call you at work or on your cell phone?

13 A My cell phone.

14 Q And what was the number?

15 A My phone? (702) 883-9880.

16 Q What did the defendant say when he called you on
17 November 29th?

18 A Well, he called me, said that he was calling to
19 say hello. And also to tell me that if I kind of knew
20 somebody that -- and I'm not sure if he was living in a -- in
21 a trailer or an apartment back then because he needed a
22 roommate. And afterwards, he asked me if I could do him a
23 favor, and I told him that was okay because it was normal.
24 When I needed something I would call him, or vice versa, he
25 would call me.

1 Q Okay. So was the favor to help with the
2 roommate?

3 A Separate from that, he wanted me to give Roxana
4 a message.

5 Q Okay. And what was the message?

6 A He told me that if I could tell Roxana that if
7 she could answer her phone, that it was for his or her own
8 good because he had been -- him or her could have been calling
9 Roxana and they weren't answering.

10 Q Okay. So let me clarify. That if she -- if --
11 that he wanted her to answer the phone?

12 A Yes, because he was calling Roxana's phone and
13 Roxana wasn't answering her phone.

14 Q Okay. So he told you that -- to tell Roxana to
15 answer the phone?

16 A Yes.

17 Q And what did he say would happen if she didn't
18 answer the phone?

19 A Well, he told me that if not, then he was going
20 to tell all of the family members that he had discovered
21 Roxana having sex with Yahir. Yahir is our cousin. Because
22 he's always said that, that he saw them or saw him one time.

23 Q Okay. So did he say anything else besides she
24 should call him and if he doesn't -- she doesn't then he'll
25 tell people?

1 A No, I asked him because -- I asked him why he
2 was saying that, I mean, because I took it as maybe a threat
3 or something like that.

4 Q Had you ever heard him say something like this
5 before?

6 A Like saying the thing about Yahir, yes.

7 Q Threatening her, had you ever heard him threaten
8 her before?

9 A No, with me that was the only time.

10 Q Okay. Were you surprised, then, with what he
11 was saying to you?

12 A Yes, because afterwards, I found out that he was
13 threatening Roxana the day after -- the day after that --

14 Q Okay.

15 A -- that he had been threatening Roxana.

16 Q Now, you said that you had heard him say things
17 about Yahir before?

18 A Yes.

19 Q And did you hear that from the defendant
20 himself?

21 A Yes.

22 Q Had you heard it from anyone else?

23 A No.

24 Q Until that day, had you ever talked to Roxana
25 about that?

1 A Yes, the next day after I had spoken with him.

2 Q Okay. But before that phone call, had you ever
3 talked to Roxana about it?

4 A No, because I didn't know about that up until
5 then.

6 Q Okay. So I just need to be clear.

7 A Uh-huh.

8 Q The day that the defendant called you was that
9 the first time you heard anything about Yahir and Roxana?

10 A No, because he would always -- I mean, he never
11 said it directly to me, but I had heard some comments about
12 that.

13 Q Okay. So there were kind of whisperings from
14 the defendant, but you had never talked with Roxana about
15 rumors you had heard?

16 A No.

17 Q The first time you talked with Roxana about
18 anything about Yahir was the day after the defendant called
19 you, so November 30th?

20 A The day after, yes.

21 Q Okay. So during that conversation, you said
22 that you asked the defendant why he was saying this?

23 A Yes, I asked Roxana that because we've always
24 known him and -- and called him by Mamo [phonetic]. So then I
25 told her, hey, Roxana, why did Mamo tell me this, so then

1 Roxana told me that he had been sending messages for some time
2 now and that's when she showed me some -- this first message
3 about -- of a few of them that he had already sent.

4 Q Okay. Did she tell you the extent of what had
5 been going on with the defendant?

6 A No, she just told me -- simply told me that he
7 was sending her messages and that this one time when she had
8 been walking down the street to catch the bus to go to school,
9 that he had showed up at that early hour. And Roxana usually
10 caught her bus around 6:15, 6:20. That he had come up to her
11 and asked her if -- said that he could give her a ride, that
12 she could get into his car and go.

13 Q Okay. What was her attitude, her demeanor like
14 when she was telling this to you?

15 A She started to get really nervous and she
16 started crying. And I asked her to tell me if something was
17 going on because, you know, he kept saying, you know, like in
18 a very short way that something was happening with -- with
19 them, with the others, with Yahir.

20 Q Okay. So I want to go back, then, to the
21 conversation with the defendant. You said that it sounded to
22 you like he was threatening Roxana?

23 A Yes.

24 Q And then did you go on to ask him why are you
25 saying this?

1 A Him?

2 Q Did you ask him why he was saying that?

3 A Yes, I did ask him.

4 Q And what did he say?

5 A That's when he told me that he just wanted to
6 talk to her.

7 Q Okay. Did you ask him any more questions?

8 A No, that's -- after that is when he told me what
9 had supposedly happened with Roxana or what had happened with
10 them and Yahir.

11 Q Okay. When you were with Roxana at Subway, do
12 you remember times that the defendant would call her?

13 A No.

14 Q Okay. Do you remember times that he would call
15 on her cellular phone and that she wouldn't answer?

16 A Her? No, not her, not that day.

17 Q No, not that day necessarily, but other days?

18 A Other days? No, that I had seen it, no, but she
19 had told me.

20 Q Okay. So that was just information, then, that
21 you had gotten from Roxana?

22 A Yes.

23 Q And then seen on her cell phone?

24 A Yes. A message that he had sent her.

25 Q Okay. All right.

1 MS. FLECK: Pass the witness.

2 THE COURT: Cross-examination.

3 MS. FELICIANO: Thank you.

4 CROSS-EXAMINATION

5 BY MS. FELICIANO:

6 Q Prior to the day that Guillermo called you and
7 said to have Roxana call him, you testified you never had a
8 conversation with her about Yahir?

9 A No.

10 Q So you never had a conversation with her and
11 said it's not right to have a relationship with him?

12 A No, because up until then I didn't know exactly.

13 Q Okay. So prior to that, you didn't tell her,
14 he's your family, that's not right?

15 A Well, no, I couldn't have said that because I
16 didn't know what -- what was going on there.

17 Q Okay. And so you didn't then say to her stop
18 doing that?

19 A After that?

20 Q Prior to that, still prior to that?

21 A No, because I'll insist I didn't know about it.

22 Q Didn't know anything about it?

23 A No. Just comments he was making, but he hadn't
24 made these comments directly to me.

25 MS. FELICIANO: Court's indulgence.

1 BY MS. FELICIANO:

2 Q And you testified you lived with Guillermo even
3 after you lived with Roxana?

4 A Yes.

5 Q So you lived with Guillermo for a longer time
6 than you lived with Roxana?

7 A We all lived together for a while, all of us.
8 And afterwards, me and him lived together for a while because
9 he was renting a room from my apartment.

10 Q And you lived with Roxana and Guillermo at the
11 University Park Apartments?

12 A Yes.

13 Q And Roxana never told you that Guillermo had
14 been sexually abusing her?

15 A Never.

16 Q She never said he was touching her and she
17 didn't want him to touch her?

18 A Never.

19 Q And you never suspected that he had been abusing
20 her?

21 A No, never.

22 Q And you knew them to kind of hang out together?

23 A They would hang out together, but I always
24 noticed that the relationship was normal, like between a
25 father and a daughter.