

**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 VII**

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**Renteria-Novoa v. Warden Case No. 84656**

**INDEX TO APPELLANT'S APPENDIX**

| <b><u>Document</u></b>   | <b><u>Page</u></b> |
|--|--------------------|
| Amended Information  | 18-32              |
| Findings of Fact, Conclusions of Law and Order 5-27-2015       | 1104-1108          |
| Findings of Fact, Conclusions of Law and Order 4-27-2022       | 1419-1435          |
| Information  | 1-17               |
| Judgment of Conviction   | 1046-1053          |
| Notice of Appeal 10-5-2012                                     | 1054-1057          |
| Notice of Appeal 4-29-2022                                     | 1436-1438          |
| Notice of Entry  | 1418               |
| Order of Affirmance  | 1069-1076          |
| Order of Reversal and Remand                                   | 1109-1116          |
| Pro Per Petition for Writ of Habeas Corpus                     | 1078-1092          |
| Remittitur 10-21-2014  | 1077               |
| Remittitu 4-24-2017  | 1117               |
| Reply to State's Response to Supplemental Memorandum           | 1376-1391          |
| Second Amended Information                                     | 33-42              |
| State's Answering Brief (Direct Appeal)                        | 1439-1520          |
| State's Response to Pro Per Petition for Writ of Habeas Corpus | 1093-1103          |
| State's Response to Supplemental Memorandum                    | 1356-1375          |
| Supplemental Memorandum  | 1118-1355          |

| <b><u>Transcript/Minutes</u></b>  | <b><u>Page</u></b> |
|-----------------------------------|--------------------|
| Transcript of Evidentiary Hearing | 1392-1417          |
| Transcript of Jury Trial Day 1    | 44-378             |
| Transcript of Jury Trial Day 2    | 379-559            |
| Transcript of Jury Trial Day 3    | 560-832            |
| Transcript of Jury Trial Day.4    | 833-1045           |
| Transcript of Sentencing          | 1058-1068          |

1 years ago from where?

2 PROSPECTIVE JUROR NO. 068: I'm from Mexico.

3 MS. FLECK: And the last 20 years have you lived in  
4 Las Vegas?

5 PROSPECTIVE JUROR NO. 068: In Las Vegas.

6 MS. FLECK: Any contact with the criminal justice  
7 system when you were living back in Mexico?

8 PROSPECTIVE JUROR NO. 068: No.

9 MS. FLECK: I posed some questions yesterday  
10 regarding laws being different here in the United States as  
11 opposed to in another country. If you were chosen to be a  
12 juror, any problem following the law that's read to you by the  
13 judge and not comparing it to something that happens back  
14 home?

15 PROSPECTIVE JUROR NO. 068: No. No problem at all,  
16 except my problem is that I can't speak or write the language.

17 MS. FLECK: So with the use of an interpreter, even  
18 with the help of an interpreter, do you still feel that  
19 uncomfortable and that you would not be a good juror for this  
20 case?

21 PROSPECTIVE JUROR NO. 068: Yes. I feel very  
22 uncomfortable.

23 MS. FLECK: Okay. So and I'm not trying to -- I'm  
24 not trying to like drag something out of you that you don't  
25 want to say, but I need you to kind of explain to me and to

1 the judge, to the defense why you think you wouldn't be a good  
2 juror, why you're uncomfortable. Everybody's uncomfortable  
3 with the charges. Is there something different for you that  
4 makes you feel like you should not be on this jury?

5 PROSPECTIVE JUROR NO. 068: There's not a difference  
6 at all, but in this particular kind of situations I get very  
7 nervous.

8 MS. FLECK: Okay. But a lot of people are nervous,  
9 so that's -- so besides that, do you think that you can be  
10 fair then to sit on the jury? Do you think you can be fair  
11 and listen to both sides?

12 PROSPECTIVE JUROR NO. 068: Yes. It could be  
13 possible.

14 MS. FLECK: Your Honor, I -- I don't know if you have  
15 anymore questions. Otherwise I --

16 THE COURT: Mr. Aguilar, I understand that, you know,  
17 this is -- jury service is not something that anybody's use  
18 to. We call you out of your daily life, we ask you to come  
19 here and we ask you to deal with, in this case, charges that  
20 are very uncomfortable for everybody. Are you saying that you  
21 would be so nervous and so uncomfortable that you wouldn't be  
22 able to perform your duty as a juror?

23 PROSPECTIVE JUROR NO. 068: Yes. I consider that,  
24 because what I listen to, I forget things.

25 THE COURT: I'm not -- I'm not sure what you're

1 saying. You don't -- you forget things?

2 PROSPECTIVE JUROR NO. 068: Yes. In general a lot of  
3 the questions from yesterday, I don't even remember them.

4 THE COURT: Do you have any medical conditions that  
5 interfere with your memory, or is it just that you generally  
6 have a bad memory?

7 PROSPECTIVE JUROR NO. 068: Yeah. I think that in  
8 general I have very bad memory.

9 THE COURT: Okay. During the trial, if you are asked  
10 to serve as a juror in this case, you would be allowed to have  
11 a notebook and a pen. In fact, we give you a notebook and a  
12 pen. Would that -- if you were able to write things down,  
13 would you be able to perform your duty as a juror?

14 PROSPECTIVE JUROR NO. 068: Yes. I came here to  
15 render a service.

16 THE COURT: Okay. Now, I understand that you're  
17 nervous and, you know, I would venture to guess that probably  
18 a majority of people in this room are nervous and a little  
19 uncomfortable right now. But do you think that you would be  
20 able to put that aside and with the assistance of a notepad  
21 and a pen be able to render your service and to listen to the  
22 evidence and be fair and impartial?

23 PROSPECTIVE JUROR NO. 068: I will try.

24 THE COURT: Okay. All right. I appreciate that.  
25 Mr. Feliciano, did you have any questions for

1 Mr. Aguilar?

2 MR. FELICIANO: Not at this time. I will later down  
3 the road.

4 THE COURT: All right. Ms. Fleck, anymore questions?

5 MS. FLECK: I'm going to actually make a challenge  
6 for cause. I just -- based upon, you know, the -- him not  
7 remembering what was said today, what he had just said  
8 yesterday. I don't believe that he's comfortable to the point  
9 that I don't think he can listen.

10 I think he's nervous to the point that he can't  
11 listen. And I don't think that while we're using an  
12 interpreter and it's not necessarily coming through, it's  
13 clear to me that he's not capable of sitting on this jury  
14 listening, making this grave of a decision. I just -- I'm  
15 going to make a challenge for cause.

16 THE COURT: Mr. Feliciano, I know that you just sort  
17 of waived your opportunity to traverse, but now that there's  
18 an actual motion on the table, do you wish to traverse?

19 MR. FELICIANO: Yes.

20 THE COURT: Okay. You may proceed.

21 MR. FELICIANO: Sir, you said that -- you just said a  
22 moment ago that I guess you could do your duty if you were  
23 selected for the jury?

24 PROSPECTIVE JUROR NO. 068: Yes, I did say it. But  
25 now that I'm listening to that person, I take it back and I

1 don't feel I can take the responsibility about a trial of this  
2 nature.

3 MR. FELICIANO: Well, I mean, it's a really big  
4 responsibility and everybody in this room is part of it. I  
5 mean, how -- is there something about you that's different,  
6 where you can't bear that responsibility and give Mr. Renteria  
7 Novoa a fair trial?

8 PROSPECTIVE JUROR NO. 068: Well, I too have children  
9 and I wouldn't like -- that I wouldn't like to be in a  
10 situation where the offended party's family is in right now.

11 MR. FELICIANO: Well, nobody would like that. But if  
12 you were given a notepad and able to take notes, could you  
13 follow along with the trial?

14 PROSPECTIVE JUROR NO. 068: To my possibilities or  
15 abilities, yes.

16 MR. FELICIANO: And could you give Mr. Renteria Novoa  
17 a fair trial?

18 PROSPECTIVE JUROR NO. 068: Well, I'm an immigrant  
19 and I'm a citizen because that's what an immigration judge  
20 decided. But if the person that's being accused right now is  
21 proven to be guilty, the authorities should do their job.

22 MR. FELICIANO: What if they're proven to be not --  
23 what if the State doesn't prove their case, will you find him  
24 not guilty?

25 PROSPECTIVE JUROR NO. 068: Not guilty.



1 MR. FELICIANO: Thank you, sir.

2 Judge, we would submit that he's -- he can serve.

3 THE COURT: All right. The motion's denied. We'll  
4 keep him for now. You may continue.

5 MR. FELICIANO: Okay. If you'd pass it back to  
6 Mr. Correa.

7 PROSPECTIVE JUROR NO. 053: 053, Antonio Correa.

8 MR. FELICIANO: Thank you. Okay. And just so we're  
9 clear, nobody else -- nobody else has those feelings, while  
10 we're here? Okay. All right. thank you.

11 Sir, you're a physician, correct?

12 PROSPECTIVE JUROR NO. 053: Yes.

13 MR. FELICIANO: And you have one child?

14 PROSPECTIVE JUROR NO. 053: Yes.

15 MR. FELICIANO: Is there anything about the nature of  
16 these allegations that makes it difficult for you to be fair?

17 PROSPECTIVE JUROR NO. 053: I don't think so.

18 MR. FELICIANO: You've never been on a jury before,  
19 is that --

20 PROSPECTIVE JUROR NO. 053: No.

21 MR. FELICIANO: -- correct?

22 Okay. Is that something -- do you want to be on a  
23 jury?

24 PROSPECTIVE JUROR NO. 053: Well, if I'm chosen, I'll  
25 be here.

1 MR. FELICIANO: Okay. So is there anything else that  
2 we need to know about you that may affect your ability to be  
3 fair?

4 PROSPECTIVE JUROR NO. 053: I don't think so.

5 MR. FELICIANO: If you were sitting in that chair  
6 where Mr. Renteria-Novoa is sitting, would you be comfortable  
7 with a person with your mindset judging you?

8 PROSPECTIVE JUROR NO. 053: Yes. I think so.

9 MR. FELICIANO: Thank you, sir.

10 I think we can -- yeah. Thanks.

11 PROSPECTIVE JUROR NO. 013: 013, Roshelle Barrow.

12 MR. FELICIANO: You're a third grade teacher; is that  
13 correct?

14 PROSPECTIVE JUROR NO. 013: Yes.

15 MR. FELICIANO: Okay. And I have a note here that I  
16 wrote down that you said you can tell when kids are being  
17 honest?

18 PROSPECTIVE JUROR NO. 013: No. There's no --

19 MR. FELICIANO: That's just what I wrote, so.

20 PROSPECTIVE JUROR NO. 013: Yeah. No -- well, most  
21 of the time I find when children are maybe -- if they're  
22 telling on somebody for offense against them, for example I  
23 had a student come up to me the other day and said he was  
24 getting punched on the bus, and he was crying. And so I'm  
25 going to tend to believe him because he's crying.

1           And I went up to the office and of course the office  
2 took care of it. I didn't -- you know, I didn't hear the  
3 other side of the story or anything like that. But so I guess  
4 if something like that, if a child is -- or a minor is coming  
5 up to accuse somebody of hurting them, I'm going to think  
6 what's the motive for them to say something like that. So I  
7 definitely take that into account, I guess, is what I'm  
8 saying.

9           MR. FELICIANO: Have you ever had any kids come up to  
10 you and lie about stuff?

11          PROSPECTIVE JUROR NO. 013: Oh, yes. And I said that  
12 yesterday too. I've had kids come up to me with tears in  
13 their eyes and I know that they're flat out lying to me as  
14 well. It's just part of dealing with children.

15          MR. FELICIANO: Have you ever had to judge the  
16 credibility of two conflicting stories?

17          PROSPECTIVE JUROR NO. 013: Unfortunately sometimes I  
18 have to do that. It's difficult and a lot of times I end up  
19 calling parents in and telling them the situation and trying  
20 to rectify it that way.

21          MR. FELICIANO: And if -- what are some of the things  
22 that you look at when you're trying to determine who's  
23 credible and who's not credible?

24          PROSPECTIVE JUROR NO. 013: I -- definitely the first  
25 thing I ask is was anybody around, anybody see it happen,

1 anybody hear. I definitely try to get the facts of what  
2 actually occurred. Sometimes when it's just one versus the  
3 other and there's nobody around to corroborate their story, I  
4 just have to speak with them individually and, like I say,  
5 talk to their parents and tell them the situation. But I  
6 can't really -- sometimes you just don't know.

7 MR. FELICIANO: So corroborating evidence has helped  
8 you before?

9 PROSPECTIVE JUROR NO. 013: Oh, definitely.  
10 Definitely.

11 MR. FELICIANO: Since you do deal with children, what  
12 do you think about these charges?

13 PROSPECTIVE JUROR NO. 013: Well, they're ugly  
14 charges of course, you know.

15 MR. FELICIANO: Do you think, considering that you  
16 deal with children on a day-to-day basis, that you could put  
17 that aside and judge this case on the facts?

18 PROSPECTIVE JUROR NO. 013: Working with children,  
19 like I said before, for a minor to come up and accuse an adult  
20 of doing something like that, it's going to be very difficult  
21 for me not to believe a child, because unless there's, you  
22 know, evidence or a reason why they would make something up  
23 like that.

24 MR. FELICIANO: So if you were sitting in that chair,  
25 how would you feel if someone with your mindset was on your

1 jury?

2 PROSPECTIVE JUROR NO. 013: To be honest, I would  
3 probably be a little worried, because I probably have a  
4 tendency to side for the minor, you know, or the minors. I  
5 would -- I still think if a minor says somebody did that to  
6 them, or something in that nature, you know, there's -- I  
7 don't know if -- there could be reasons, you know, that  
8 they're making it up.

9 MR. FELICIANO: Mm-hmm.

10 PROSPECTIVE JUROR NO. 013: But it's such a heinous  
11 crime I just -- it's hard for me to imagine somebody deciding  
12 to put somebody in his position out of spite or whatever.

13 MR. FELICIANO: Well, when allegations are made, I  
14 mean, I don't think you can say the minor's going to know  
15 we're -- that we're going to end up here; is that fair to say?

16 PROSPECTIVE JUROR NO. 013: Yes. That's very fair to  
17 say.

18 MR. FELICIANO: That they might not understand the  
19 consequences of their actions?

20 PROSPECTIVE JUROR NO. 013: Yes.

21 MR. FELICIANO: But I mean, taking all that into  
22 consideration, do you think you can be a fair juror and give  
23 Mr. Renteria-Novoa a fair trial?

24 PROSPECTIVE JUROR NO. 013: I would definitely try my  
25 best to be fair and listen to both sides of the evidence and

1 the defendant and the accuser.

2 MR. FELICIANO: Okay. Anything else you think we  
3 should know?

4 PROSPECTIVE JUROR NO. 013: No.

5 MR. FELICIANO: Okay. Thank you.

6 PROSPECTIVE JUROR NO. 016: 016, Ged Cordero.

7 MR. FELICIANO: Zero, one, six. Mr. Cordero, you  
8 have two children?

9 PROSPECTIVE JUROR NO. 016: Yes.

10 MR. FELICIANO: Two grown children?

11 PROSPECTIVE JUROR NO. 016: Yeah.

12 MR. FELICIANO: And how do these allegations -- what  
13 do you think about these allegations? How do they make you  
14 feel?

15 PROSPECTIVE JUROR NO. 016: I believe it's like an  
16 [unintelligible] a bad allegation, you know, because we don't  
17 know yet if the plaintiff or the -- what they call this, the  
18 defendant is -- you know, because we [unintelligible] right  
19 now I don't know what this case. I don't know what's going  
20 on. We don't know what's, you know, we have to go through the  
21 process of the trial, listen for the evidence and the  
22 witnesses.

23 MR. FELICIANO: And how do you feel about taking on  
24 that burden? I know that's a burden that we're going to ask  
25 you to take on. Is that something that's difficult for you?

1 PROSPECTIVE JUROR NO. 016: Actually it's not. It's  
2 not so difficult for me.

3 MR. FELICIANO: So you're able to look at both sides  
4 and be fair?

5 PROSPECTIVE JUROR NO. 016: Definitely we have to  
6 look for both sides, you know.

7 MR. FELICIANO: Now, if the State was unable to prove  
8 their case and they don't prove their case, what would be your  
9 verdict?

10 PROSPECTIVE JUROR NO. 016: Oh, if they don't prove  
11 their case, then the defendant is going to be not guilty.

12 MR. FELICIANO: And you would have no problem  
13 bringing back a not guilty verdict if you believe that they  
14 haven't proven their case?

15 PROSPECTIVE JUROR NO. 016: I don't have any problem,  
16 you know. It depends on the trial, the witnesses and then,  
17 you know, the evidence.

18 MR. FELICIANO: Is there any other information you  
19 think we should know before we select the jury?

20 PROSPECTIVE JUROR NO. 016: [Unintelligible] no.

21 MR. FELICIANO: No. Okay. Would you pass the mike,  
22 please, sir.

23 PROSPECTIVE JUROR NO. 017: 017, Helbert.

24 MR. FELICIANO: Zero, one, seven. You said your  
25 daughter's an attorney?

1 PROSPECTIVE JUROR NO. 017: That's correct.

2 MR. FELICIANO: What type of law does she practice?

3 PROSPECTIVE JUROR NO. 017: She practices family law.

4 MR. FELICIANO: And you do have other than your girl,  
5 you have a boy as well?

6 PROSPECTIVE JUROR NO. 017: Correct.

7 MR. FELICIANO: Have you ever had to judge  
8 credibility between both of them when they were younger?

9 PROSPECTIVE JUROR NO. 017: Absolutely.

10 MR. FELICIANO: Well, what kind of things would  
11 happen, if you can remember?

12 PROSPECTIVE JUROR NO. 017: You know, they both have  
13 their own stories to tell, so.

14 MR. FELICIANO: So how would you go about sifting  
15 through everything and getting at the truth?

16 PROSPECTIVE JUROR NO. 017: Just questioning them in  
17 detail basically, to figure out where they're coming from.

18 MR. FELICIANO: So basically, whichever -- whichever  
19 side sounds better or makes the most sense?

20 PROSPECTIVE JUROR NO. 017: That, and trying to see  
21 where they're coming from, whether it's emotional, that  
22 they're trying to, you know, maybe that's the cause of  
23 somebody saying something rather than the truth.

24 MR. FELICIANO: Has your daughter ever practiced any  
25 criminal law?



1 PROSPECTIVE JUROR NO. 017: No, she has not.

2 MR. FELICIANO: And you served on a criminal jury  
3 before?

4 PROSPECTIVE JUROR NO. 017: Yes, and it was eerily  
5 similar to this one.

6 MR. FELICIANO: Okay. You mean the charges?

7 PROSPECTIVE JUROR NO. 017: Yes.

8 MR. FELICIANO: How was that experience for you?

9 PROSPECTIVE JUROR NO. 017: It was hard, very hard.

10 MR. FELICIANO: It's a lot to ask you to take on,  
11 right?

12 PROSPECTIVE JUROR NO. 017: Yeah. There's a lot at  
13 stake, so.

14 MR. FELICIANO: Was that here?

15 PROSPECTIVE JUROR NO. 017: Yes.

16 MR. FELICIANO: And I don't remember, but how long  
17 ago was that?

18 PROSPECTIVE JUROR NO. 017: It's closer to four  
19 years. I checked that last night.

20 MR. FELICIANO: Is there anything about that  
21 experience that makes it difficult, where you don't want to be  
22 a part of it again?

23 PROSPECTIVE JUROR NO. 017: Yeah, absolutely.  
24 There's -- there was some tough decisions that had to be made  
25 by everyone on the jury. And some of them, it didn't do so

1 well with some of the decisions we came up with.

2 MR. FELICIANO: Despite all of that, I mean, is that  
3 something you can put aside and do it again for us?

4 PROSPECTIVE JUROR NO. 017: I've learned from it. So  
5 yeah, there's certain things that I'm going to retain as a  
6 result of being on that jury.

7 MR. FELICIANO: All right. So I mean, that  
8 experience obviously stayed with you.

9 PROSPECTIVE JUROR NO. 017: Oh, yes. Yes. Well, it  
10 has now that I'm back here again, yeah.

11 MR. FELICIANO: And so do you think you could give  
12 Mr. Renteria-Novoa a fair trial?

13 PROSPECTIVE JUROR NO. 017: I certainly hope so, yes.

14 MR. FELICIANO: When you say you hope so, that --

15 PROSPECTIVE JUROR NO. 017: Basically it comes down  
16 to who you believe.

17 MR. FELICIANO: So whatever --

18 PROSPECTIVE JUROR NO. 017: There was no real hard  
19 evidence or DNA, none of that again. So it comes down to the  
20 testimony of both, both parties.

21 MR. FELICIANO: So that's what you would judge the  
22 case on?

23 PROSPECTIVE JUROR NO. 017: That's where we -- yeah.  
24 That's how that one came about, yes.

25 MR. FELICIANO: So if the State doesn't prove their

1 case, what do you -- what's your vote?

2 PROSPECTIVE JUROR NO. 017: Well, again, not guilty.

3 MR. FELICIANO: Thank you, sir.

4 PROSPECTIVE JUROR NO. 027: 027, Parry.

5 MR. FELICIANO: Oh, two, seven. Mr. Parry.

6 PROSPECTIVE JUROR NO. 027: Yes.

7 MR. FELICIANO: You have some two nephews that work  
8 for Metro?

9 PROSPECTIVE JUROR NO. 027: Yes. One's a bailiff and  
10 one works for Metro.

11 MR. FELICIANO: And they talked to you about their  
12 work?

13 PROSPECTIVE JUROR NO. 027: A little bit.

14 MR. FELICIANO: Do -- anything about that make it  
15 difficult to judge the credibility of an officer? I mean,  
16 would you give an officer more credibility as opposed to  
17 someone who's not an officer?

18 PROSPECTIVE JUROR NO. 027: Yes.

19 MR. FELICIANO: And why is that?

20 PROSPECTIVE JUROR NO. 027: Because they're officers.

21 MR. FELICIANO: Do you think there's ever times that  
22 officers could be less credible than someone who's a  
23 non-officer?

24 PROSPECTIVE JUROR NO. 027: Obviously.

25 MR. FELICIANO: So could you judge the officer just

1 like you would judge the other witnesses that come in the room  
2 and testify? Could you be -- give them the same level of  
3 scrutiny?

4 PROSPECTIVE JUROR NO. 027: Yes.

5 MR. FELICIANO: The nature of these charges, as we've  
6 been hearing, it's difficult for a lot of people to deal with.  
7 How do you feel about that?

8 PROSPECTIVE JUROR NO. 027: I have no problem  
9 with it.

10 MR. FELICIANO: So you think you can be -- you can be  
11 fair and give Mr. Renteria-Novoa a fair trial?

12 PROSPECTIVE JUROR NO. 027: Yes.

13 MR. FELICIANO: And you have been on a jury before?

14 PROSPECTIVE JUROR NO. 027: Yes.

15 MR. FELICIANO: And that was a civil -- a civil case?

16 PROSPECTIVE JUROR NO. 027: Yes.

17 MR. FELICIANO: Now, you're going to be instructed  
18 not now, but you'll be instructed later, if you're on the  
19 jury, about the law of criminal law, and it's different as far  
20 as the burden of proof that the State has to present. Is  
21 that -- that's beyond --

22 As Ms. Fleck was saying yesterday, it's beyond a  
23 reasonable doubt. It's much higher than the preponderance of  
24 the evidence standard that you had in your civil trial. Is  
25 that -- do you have an issue with those --

1 MS. FLECK: I'm going to object as to the  
2 qualification of much higher. It's the highest burden in the  
3 system, but it's not much higher.

4 THE COURT: Can you clarify and rephrase the  
5 question.

6 MR. FELICIANO: Okay. It's the highest burden that  
7 we have in the system. Would you have any problems then from  
8 your past trial experience dealing with a different burden of  
9 proof?

10 PROSPECTIVE JUROR NO. 027: No.

11 MR. FELICIANO: And do you have some attorneys in  
12 your family?

13 PROSPECTIVE JUROR NO. 027: Yes.

14 MR. FELICIANO: And they don't practice criminal law,  
15 or have they ever?

16 PROSPECTIVE JUROR NO. 027: My daughter-in-law  
17 doesn't, but I'm not sure about my [inaudible].

18 MR. FELICIANO: Anything about having attorneys in  
19 your family --

20 THE COURT: Hang on a second.

21 (Pause in proceedings)

22 THE COURT: Can you speak into the microphone, sir.  
23 Thanks. We just need to record everything that's being said.

24 MR. FELICIANO: So anything about having attorneys in  
25 your family make it difficult to be on a case and be on a

1 jury?

2 PROSPECTIVE JUROR NO. 027: No.

3 MR. FELICIANO: Okay. Is there anything else you  
4 think we should know before we select our jury?

5 PROSPECTIVE JUROR NO. 027: The only thing that's  
6 going to be kind of disturbing to me, to listen to somebody  
7 translate right behind me. It's very annoying. So I don't  
8 know how I can pay attention to the testimony and then have it  
9 repeated in another language right behind me.

10 MR. FELICIANO: Okay.

11 PROSPECTIVE JUROR NO. 027: It's very difficult, I  
12 think.

13 MR. FELICIANO: Well, we'll see what we can do about  
14 that for you. Sorry. Thank you.

15 THE COURT: All right. Let's do this. We've got an  
16 indication that some of the jurors want to take a restroom  
17 break. It's now 12:20. The question is do we want to just  
18 take a quick break and push through, or do you guys want to  
19 break for lunch now?

20 Can counsel approach very quickly and let's talk  
21 about scheduling very quickly.

22 (Bench conference.)

23 THE COURT: You guys want to just keep -- do you want  
24 me to even ask them, or you want to just break for lunch now?

25 MS. FLECK: It's up to you. I mean, we called off

1 our -- I had the victim coming at 1:00, and I told her to --

2 THE COURT: Yeah. We're not going to --

3 MS. FLECK: So --

4 MR. FELICIANO: I don't know if they want -- it's  
5 going to be -- I'm not even halfway done, so it's going to be  
6 a while. I don't know if we should just break for lunch and  
7 come back, or --

8 MS. FLECK: I think they're annoyed is all.

9 THE COURT: Let me say something. I thought I said  
10 this [inaudible]. Ordinarily you don't get to go juror by  
11 juror. All right. It's supposed to be group questions and  
12 you ask follow-ups. But I'm giving you some slack. But  
13 please hurry it up and don't ask the same questions I asked  
14 yesterday. I could have answered half of their questions  
15 about previous jury service, because they told me yesterday.

16 MR. FELICIANO: Well, Judge, then I got different  
17 answers.

18 THE COURT: Let's speed it up. All right.

19 MR. FELICIANO: I will speed it up.

20 THE COURT: All right. So let's take a lunch break,  
21 and then we'll have them come back in an hour then.

22 UNKNOWN SPEAKER: Let's decide what to do about  
23 Mr. Aguilar.

24 THE COURT: I'm sorry?

25 UNKNOWN SPEAKER: I mean, the entire jury panel, the

1 guy just said it's really annoying to listen to the  
2 interpreter, and the entire panel was like yeah.

3 THE COURT: Well, it is, because he can't -- because  
4 he's sitting right behind there. I can even hear the  
5 interpreter. It's actually even distracting me and I'm 30  
6 feet away. So I don't know if we should move them to a  
7 different --

8 MR. FELICIANO: Maybe they can use the transmitter.

9 THE COURT: Like the headphones. The problem is I  
10 think there's only one, then they would hear -- there's only  
11 one frequency.

12 UNKNOWN SPEAKER: Why don't we just get rid of him.

13 THE COURT: I'm thinking maybe when we come back,  
14 maybe we have him sit in the front so that when they're  
15 talking it can come this way rather than --

16 UNKNOWN SPEAKER: The thing is, why don't we just  
17 agree to [inaudible]. I mean, his actual answers were worse  
18 actually for the defendant in terms that if he's guilty, he  
19 should go -- I think the fact -- just the fact that he's  
20 Hispanic, if that's the only reason that we're keeping him, he  
21 was nonresponsive to answers even in English -- I mean, even  
22 in Spanish.

23 THE COURT: Well, let's do this. Let's send him off  
24 to lunch, and then we can talk about this after they're gone.

25 UNKNOWN SPEAKER: Okay.



1           THE COURT: All right. Because the pregnant woman  
2 needs a bathroom break. All right.

3                               (End bench conference.)

4           THE COURT: All right. Here's what we're going  
5 to do. It's now 12:25, and as I indicated, we've gotten some  
6 indication that some of the jurors need a break. So let's  
7 take a one-hour break for lunch.

8           Same admonitions apply, which are during lunch you  
9 are not to reach any conclusions about this case. Do not talk  
10 to anyone about the case. Do not investigate any facts of  
11 this case. Do not view any media, press or Internet reports  
12 about this case. Do not talk to anyone who may have been  
13 involved in any way with this case. Do not discuss the facts  
14 of this case with each other. Remember to wear your badges at  
15 all times while you are in and around the courthouse.

16           We'll see you at -- it's now like 12:24. Let's make  
17 it 1:25. All right. Thanks.

18                               (Prospective jurors recessed at 12:21 p.m.)

19           THE COURT: We're still on the record. We're now  
20 outside the presence of the jury. Did anybody want to put  
21 anything on the record? We had a couple of bench conferences.  
22 I don't know if either side wanted to memorialize them or not.

23           MS. FLECK: You know, I would just like to renew my  
24 motion for cause on Mr. Aguilar, Badge No. 0068. He is  
25 currently in the box with the aid of an interpreter. He --

1 his first question was -- or his first response today was,  
2 hey, I got confused yesterday when asked how long he'd lived  
3 here, and that was once we had the interpreter. And yesterday  
4 he said ten years, now today he said 20.

5 He was non-responsive to numerous questions today by  
6 me and the defense and the judge even with the use of the  
7 interpreter. He has repeatedly said that he's uncomfortable  
8 and nervous. I know that that doesn't mean that he wouldn't  
9 be qualified, but I don't think he's understanding. I don't  
10 know that he has a -- he has problems remembering things. He  
11 said he didn't remember any of the questions even that were  
12 posed yesterday.

13 I don't know how we expect somebody to listen to  
14 testimony then and be able to be a qualified juror if he can't  
15 even remember questions that were posed yesterday. So will he  
16 say the trigger words, yes, he can be fair and impartial;  
17 sure. But on a totality of every single thing that he has  
18 said and the way that he's acted and the fact that he's  
19 non-responsive, he doesn't really seem to understand what's  
20 going on.

21 Furthermore, he has said -- or he's using the  
22 interpreter and Mr. Parry has now expressed that it is  
23 distracting to him, he feels uncomfortable sitting through the  
24 entire trial because of that. That's really the only concern  
25 that he has said about sitting on this jury. As soon as

1 Mr. Parry said that, literally 90 percent of the panel who's  
2 in the box starts shaking their head yes.

3 So it's distracting to everybody to the point that  
4 now we're losing interest from other jurors because of the  
5 interpreter. I'm not saying he's not entitled to be on a jury  
6 because of that, but with the totality of every single other  
7 thing, I think that he should be kicked.

8 And I'll go back to his actual answers regarding  
9 conviction was if he's guilty, he should be punished. If he  
10 is -- I come here legally and I now have gone through my  
11 courses and basically showing respect for the criminal justice  
12 system.

13 So in terms of how he would play out for the State, I  
14 don't feel uncomfortable with him sitting on the jury in terms  
15 of his legal views. So I think the record would reflect that  
16 he -- I feel like the answers that he gave were worse for the  
17 defense than for the State. But so I renew my motion.

18 THE COURT: All right. Your response.

19 MR. FELICIANO: Judge, when he was asked if -- how  
20 long he had been here, I believe that was without the  
21 assistance of an interpreter, and that's when we got one. And  
22 he cleared that up this morning. I asked him if he could be  
23 fair; he said he could be fair and listen throughout the trial  
24 and take notes. We see no reason why he should be kicked.

25 It's unfortunate that it's distracting to Mr. Barry

1 [sic], but that juror does have a right to be on the jury. So  
2 we would submit that he's fine and we would ask that he remain  
3 on the jury.

4 THE COURT: All right. Well, there's two separate  
5 issues here. Number one is whether or not he can actually  
6 comprehend what's going on and can be fair and impartial. And  
7 the second issue is whether or not his presence with the  
8 interpreter is distracting to the other members of the jury.

9 I will note that when the other juror, Mr. Parry,  
10 Badge No. 27, indicated that he was distracted by the  
11 interpreter, the other -- many of the other jurors did also  
12 nod their heads. And I don't know -- well, the situation is  
13 Mr. Aguilar is currently seated in Seat No. 1, 2, 3, 4, 5,  
14 which is the back middle, with the interpreter seated next to  
15 him. So it looks like the interpreter is actually sitting  
16 almost directly behind Mr. Parry.

17 So sort of logistically, I think the interpreter is  
18 about a foot and a half away from Mr. Parry's ear, so he  
19 probably is very distracted. But what I think we do on that  
20 issue logistically is during lunch try to come up with some  
21 other way so that the interpreter is not sitting directly  
22 behind other jurors. I don't know if maybe you move him to a  
23 different part of the courtroom, or have him sit in the front  
24 corner or something like that. But that's an issue that I  
25 think can be solved by some sort of physical rearrangement.

1           But as to the first issue, I was a little bit  
2 concerned about some of Mr. Aguilar's initial responses. But  
3 then when I questioned him and when Mr. Feliciano questioned  
4 him, yeah, he's nervous, he doesn't want to be here, it's a  
5 difficult job. I mean, these things are all true. But he  
6 indicated that he could focus on what's going on and believed  
7 that he could be fair and impartial.

8           So I'm going to deny the motion to strike him for  
9 cause. But let's explore what we can do about moving the  
10 interpreter so the interpreter's not speaking directly into  
11 Mr. Parry's ear.

12           MS. FLECK: But I mean, it was everybody. Every  
13 single person was like shaking their head.

14           THE COURT: Right. But I'm just wondering, I don't  
15 know if there's a way that maybe we sit him, I don't know,  
16 maybe in the far corner or something like --

17           THE MARSHAL: I can call and see if we can get  
18 another headset.

19           THE COURT: I'm sorry?

20           THE MARSHAL: I can call and see if we can get  
21 another headset.

22           THE COURT: Yeah. Maybe another headset that  
23 operates on a different frequency, something like that.

24           MS. FLECK: You might want to get two, because the  
25 next person up is the other --

1 THE COURT: Oh. It's Ms. Martinez. Right. Well,  
2 we'll explore that during lunch, if we can even do that, if we  
3 can have three frequencies going in the courtroom or not. I  
4 honestly don't know the answer to that. I --

5 THE CLERK: [Inaudible] issue to have them sit in  
6 that front row [inaudible].

7 THE COURT: Yeah. That's the other thing is maybe we  
8 just move them back to where they were, which is the front row  
9 over there, and sort of with the understanding that he's  
10 constructively in the box. I don't know --

11 MS. FELICIANO: [Inaudible] like a rolling chair over  
12 there that we can at least put him in the corner. Maybe the  
13 rolling chair with the interpreter on the side as a temporary  
14 fix. The interpreter's out of the box, maybe able better to  
15 whisper in his ear.

16 THE COURT: Right. I mean, I think there's some  
17 solution we can explore. Maybe we'll just physically  
18 re-arrange. But I can see the problem, like I said, is, you  
19 know, literally the interpreter's about a foot and a half away  
20 from Mr. Parry's ear, so I'm sure that he's having trouble --  
21 I'm sure that he is highly distracted, but...

22 Well, we'll -- you know, maybe Randy will make some  
23 phone calls and we'll see what we can come up with, whether  
24 it's a headphone or just move him over to that corner,  
25 whatever. But all right.

1           Was there anything else either side wanted to put on  
2 the record?

3           MR. FELICIANO: No, Judge.

4           THE COURT: All right. Then let's reconvene at  
5 about -- I told the jurors to come back at 25 after. Let's  
6 make it about 20 after, and hopefully everybody is back here  
7 more or less on time.

8           MS. FLECK: So in terms of timing, I told -- like I  
9 said, I told our victim to come in at 1:00 today. I would  
10 just send her home.

11          THE COURT: Okay.

12          MS. FLECK: What do we think about -- I don't want to  
13 start her today and get like an hour in. So would you like me  
14 to have --

15          THE COURT: How long do you think her testimony  
16 will be?

17          MS. FLECK: Her direct will probably be an hour.

18          THE COURT: Well, let's see. The jury's going to  
19 make it 1:25. We've got [inaudible].

20          MS. FLECK: What we could do is --

21          THE COURT: Are you guys going to need a break  
22 between the time we impanel the jury and you do openings? Do  
23 you have to set up the ELMO or set up anything like that?

24          MS. FLECK: Maybe just 10 minutes or something.

25          MR. FELICIANO: We have a long Information that we

1 need to read too. That's going to take probably half an hour.

2 THE COURT: Right.

3 MS. FLECK: That's the other thing, yeah.

4 THE COURT: Yeah. She does read fast. It may not  
5 take half an hour. And when I do my pretrial instructions, it  
6 only takes me about 10 or 15 minutes.

7 MS. FLECK: All right. Well, why don't we do this.  
8 Why don't we -- why don't we try to figure out -- why don't we  
9 try to call an officer first or something like that. Maybe we  
10 can get the first responding officer on this afternoon.

11 THE COURT: It's up to you. I mean, it's at this  
12 stage, we're coming at 1:25. I'm just -- let's say between my  
13 pretrial instructions and the reading Information takes 30  
14 minutes. Then you guys have openings. I don't know how long  
15 those are going to be.

16 MS. FLECK: Yeah. I don't think we'll get to any  
17 witnesses, to be honest.

18 THE COURT: Well, I mean, we could be -- we could be  
19 starting openings around -- I mean, hypothetically around the  
20 neighborhood of 3:00 o'clock. I don't know how long openings  
21 are going to be. So we may be able to get one witness on, if  
22 it's a quick witness. I don't know.

23 THE MARSHAL: Judge, Jeff said that he has another  
24 channel. He'll make sure that that other headset is over here  
25 [inaudible].



1           THE COURT: Can we get two other channels for the  
2 other Tagalog person?

3           THE MARSHAL: He's checking.

4           THE COURT: Okay.

5           THE MARSHAL: I told him. He's checking to see if  
6 they have three frequencies.

7           THE COURT: We may just -- the easiest thing is maybe  
8 we just sit him back where they were, because that --  
9 everybody seemed okay with that because they're on the other  
10 side of the courtroom, and we'll just pretend that they're in  
11 there and leave those two seats vacant. I mean, that may be  
12 what we have to do.

13           (Court recessed at 12:31 p.m. until 1:24 p.m.)

14           THE COURT: On the record. State vs. Guillermo  
15 Renteria-Novoa, C268285. Mr. Renteria-Novoa is present in  
16 custody with the assistance of the Spanish interpreter.

17           For the record, Madam Interpreter, what is your name?

18           THE INTERPRETER: Maria Peralta de Gomez.

19           THE COURT: Thank you. And we also have two  
20 interpreters also, one Tagalog and one Spanish to assist  
21 jurors numbered 68 and 69. Again, for the record, can you  
22 state your names.

23           THE INTERPRETER: Josephina Dooley, [inaudible]  
24 interpreter.

25           THE INTERPRETER: Rico Rodriguez, [inaudible]

1 interpreter.

2 THE COURT: All right. Thank you for being here.

3 And also --

4 THE INTERPRETER: Mario Maldonado, Spanish  
5 [inaudible].

6 THE COURT: I appreciate it. You know what. The  
7 juror in Seat No. 5 needs an interpreter. During the lunch --  
8 we originally had the interpreter sitting in the chair next to  
9 him, but during the lunch Mr. Hanks from your office came up  
10 and brought the headphones. What did he do with them?

11 THE INTERPRETER: It's here.

12 THE COURT: Yeah. Because apparently there was an  
13 issue with the interpreter sitting in the box. The people  
14 sitting right in front of her are -- they kind of hear the  
15 talking and they can't hear anything. So are you going to sit  
16 over there? Are you going to give that a shot?

17 THE INTERPRETER: [Inaudible.]

18 THE COURT: You know what. Can you sit a little  
19 farther? Because actually that first row there is also  
20 jurors. And maybe can you sit on this side of the room, would  
21 that work? Okay. Thanks. Let's give that a shot and  
22 hopefully that will work. But yeah, just put the headphones  
23 on him when he gets here and we'll go from there.

24 All right. Are we ready to bring the jury in?  
25 Anything that you guys want to put on the record?

1 MR. FELICIANO: No, Judge.

2 THE COURT: State?

3 MS. FLECK: Nothing from the State.

4 THE COURT: Let's bring them in, Randy.

5 (Prospective jurors enter at 1:37 p.m.)

6 THE MARSHAL: Mr. Aguilar, that's for you so you can  
7 hear the Spanish interpreter, sir.

8 THE COURT: All right. Will counsel stipulate to the  
9 presence of the prospective jury?

10 MS. FLECK: The State stipulates. Thank you.

11 MR. FELICIANO: Yes, Your Honor.

12 THE COURT: Before -- ladies and gentlemen, before we  
13 broke for lunch, let me just take a second here, there was  
14 some indication that the presence of the interpreter sitting  
15 back there was a distraction to people here. So what we did  
16 is during lunch we got a set of headphones for Mr. Aguilar.

17 I just wanted to make sure, Mr. Aguilar, can you hear  
18 everything that's being said?

19 PROSPECTIVE JUROR NO. 068: [No audible response.]

20 THE COURT: Okay. If anything happens to the  
21 headphones, would you raise your hands and let me know?

22 PROSPECTIVE JUROR NO. 068: [No audible response.]

23 THE COURT: All right. So that should hopefully  
24 remove the distraction.

25 All right. Mr. Feliciano, you may continue.

1 MR. FELICIANO: Thank you, Judge.

2 Ms. Cory.

3 PROSPECTIVE JUROR NO. 058: Yes. Badge 058.

4 MR. FELICIANO: You had this issue with entrapment  
5 with your husband, correct?

6 PROSPECTIVE JUROR NO. 058: Yes.

7 MR. FELICIANO: Police entrapment.

8 PROSPECTIVE JUROR NO. 058: I can't prove it, but...

9 MR. FELICIANO: Was the case investigated?

10 PROSPECTIVE JUROR NO. 058: Yes. Well, I'm not sure  
11 what you mean by that.

12 MR. FELICIANO: Do you know what steps the police  
13 took when they were -- when they had the case open, what they  
14 did, if anything?

15 PROSPECTIVE JUROR NO. 058: Nothing. They just  
16 arrested him and the next two guys that were in the same spot  
17 as he was three minutes apart.

18 MR. FELICIANO: So you were unsatisfied with that,  
19 with that process?

20 PROSPECTIVE JUROR NO. 058: Well, yes.

21 MR. FELICIANO: So I mean, is there anything you  
22 think they should have done differently in that case?

23 PROSPECTIVE JUROR NO. 058: I don't know how that  
24 works. I mean, there were three of them in a row every three  
25 minutes apart, same location, and it was a sting is basically

1 what it was.

2 MR. FELICIANO: Okay. I have in my notes something  
3 about lying to get attention. Does that ring a bell?

4 PROSPECTIVE JUROR NO. 058: Well, she asked me, I  
5 think, about children.

6 MR. FELICIANO: Mm-hmm.

7 PROSPECTIVE JUROR NO. 058: And I guess, I think, how  
8 would I know if they were telling the truth or would I  
9 necessarily believe them. I think she was trying to compare  
10 me raising my children.

11 MR. FELICIANO: So do you think that's something  
12 that's possible?

13 PROSPECTIVE JUROR NO. 058: I presume it is, yes.

14 MR. FELICIANO: And is there anything else you think  
15 we should know about you before we select our jury?

16 PROSPECTIVE JUROR NO. 058: I don't think so.

17 MR. FELICIANO: Thank you, ma'am.

18 PROSPECTIVE JUROR NO. 062: 062.

19 MR. FELICIANO: That's Ms. Stiperski?

20 PROSPECTIVE JUROR NO. 062: Yes.

21 MR. FELICIANO: Did I say that right?

22 PROSPECTIVE JUROR NO. 062: Yes.

23 MR. FELICIANO: And do you have any kids?

24 PROSPECTIVE JUROR NO. 062: Yes. I have two  
25 daughters, one 10 years old and one 2 years old.

1 MR. FELICIANO: And you've heard the charges in this  
2 case.

3 PROSPECTIVE JUROR NO. 062: Yes.

4 MR. FELICIANO: And having children, how does that  
5 make you feel?

6 PROSPECTIVE JUROR NO. 062: Very uncomfortable.  
7 Yeah. They're not nice charges. I have a 10 years old and  
8 it's really hard for me to -- let's say before I joined what I  
9 do right now, the circus, the Cirque du Soleil, I did the  
10 bachelor in psychology back in Canada. And I was studying in  
11 child, that's what I wanted to do. And for me it's really  
12 hard to believe that 11 years old can actually lie about  
13 something like this.

14 I have a 10 years old and she lies, don't get me  
15 wrong. She lies. I think all the kids lie, yes. And but  
16 they lie about little stuff like this. When it comes to abuse  
17 that's sexual or physical or anything like this, for me it's  
18 hard to believe that actually 11 years old could come up with  
19 a story like this.

20 MR. FELICIANO: Okay. But do you think that it's a  
21 possibility that that could happen?

22 PROSPECTIVE JUROR NO. 062: It is. Yeah. I think it  
23 can always be a possibility if the kids -- I mean, you need to  
24 look at the background of the kids, if -- what kind of  
25 background, yeah, [unintelligible] lie. But the nature of

1 the -- yeah, for me it's just -- yeah, it's hard to believe  
2 that the kids at 10 years old can lie about this.

3 MR. FELICIANO: So do you think if you were sitting  
4 there and someone thought like you, you would be comfortable  
5 with that, having them sitting in a jury?

6 PROSPECTIVE JUROR NO. 062: What do you mean?

7 MR. FELICIANO: Do you think with you sitting on the  
8 jury that Mr. Renteria-Novoa can get a fair trial?

9 PROSPECTIVE JUROR NO. 062: I would -- I mean, I will  
10 do my best to give him a fair trial and listen both side and  
11 stuff. But I know how I feel and for me it's hard to believe  
12 that an 11 years old can lie about this.

13 MR. FELICIANO: Now, if the State doesn't prove their  
14 case, what would be your verdict, if they don't prove beyond a  
15 reasonable doubt that Mr. Renteria did anything?

16 PROSPECTIVE JUROR NO. 062: By it's not guilty. If  
17 they cannot prove it, of course it's not guilty.

18 MR. FELICIANO: Thank you, ma'am.

19 PROSPECTIVE JUROR NO. 062: You're welcome.

20 PROSPECTIVE JUROR NO. 022: 022. Your Honor. Your  
21 Honor, at 1240 this morning my demographics changed. Do you  
22 want me to update that?

23 THE COURT: What do you mean your demographics  
24 changed?

25 PROSPECTIVE JUROR NO. 022: My step-son was arrested

1 this morning.

2 THE COURT: Oh. Here in Las Vegas, or somewhere  
3 else?

4 PROSPECTIVE JUROR NO. 022: Well, I don't know where  
5 he actually was arrested at. He was in possession of stolen  
6 property. They came into my house this morning at 12:00 a.m.  
7 to search his room.

8 THE COURT: Do you know what he was arrested for --

9 PROSPECTIVE JUROR NO. 022: Nope.

10 THE COURT: -- what he was going to be charged with  
11 or anything?

12 PROSPECTIVE JUROR NO. 022: Nope. I know he's in, I  
13 believe, Clark County Detention Center.

14 THE COURT: Do you know who came in? Was it Metro or  
15 Henderson or --

16 PROSPECTIVE JUROR NO. 022: It was a combination of  
17 both.

18 THE COURT: Did they also conduct a search of your  
19 house?

20 PROSPECTIVE JUROR NO. 022: Just his room.

21 THE COURT: Just his room?

22 PROSPECTIVE JUROR NO. 022: Mm-hmm.

23 THE COURT: Did they take anything?

24 PROSPECTIVE JUROR NO. 022: Oh, yeah. They found a  
25 lot of stolen property.



1 THE COURT: Oh, okay. All right. Well, is that  
2 going to be an issue for you? I don't know if he's -- are you  
3 involved in the case in any way? Does he have a court hearing  
4 coming up --

5 PROSPECTIVE JUROR NO. 022: No. Nope.

6 THE COURT: -- that you need to attend, anything like  
7 that?

8 PROSPECTIVE JUROR NO. 022: Nope, nope. He's on his  
9 own. We told him if you get in trouble again, you're on your  
10 own.

11 THE COURT: How does that -- does that change  
12 anything about --

13 PROSPECTIVE JUROR NO. 022: The officers came to the  
14 house. They were well mannered. I had no problems with  
15 anything. They treated us with respect. I was allowed to use  
16 the bathroom, get a soda, have a cigarette, not a problem.

17 THE COURT: Okay. So --

18 PROSPECTIVE JUROR NO. 022: They were well mannered.  
19 They knocked -- they knocked kind of heavily, but I can  
20 understand that. We live upstairs and we were dead asleep.

21 THE COURT: Okay. All right. So does that change  
22 your willingness to serve as a juror in this case?

23 PROSPECTIVE JUROR NO. 022: No. No whatsoever.

24 THE COURT: Any effect on your ability to be fair and  
25 impartial?

1 PROSPECTIVE JUROR NO. 022: Nope.

2 THE COURT: All right. I appreciate you letting us  
3 know. That's exactly the kind of information --

4 PROSPECTIVE JUROR NO. 022: I just wanted to keep you  
5 updated with everything.

6 THE COURT: I really appreciate that. Thanks very  
7 much.

8 PROSPECTIVE JUROR NO. 022: You're welcome.

9 MR. FELICIANO: Is it Mr. Winnings [phonetic]?

10 PROSPECTIVE JUROR NO. 022: Winings.

11 MR. FELICIANO: Winings. Sorry. What do you think  
12 if a defendant in a criminal trial doesn't testify? What does  
13 that tell you?

14 PROSPECTIVE JUROR NO. 022: If he doesn't testify?

15 MR. FELICIANO: Yeah.

16 PROSPECTIVE JUROR NO. 022: Well, that's a hard  
17 question. I've seen too many TV shows.

18 MR. FELICIANO: Okay. [Unintelligible] Law & Order?

19 PROSPECTIVE JUROR NO. 022: And, you know, I think  
20 that's his right not to testify. But that doesn't make any  
21 difference. The DA has to prove without a reasonable doubt  
22 that this person is guilty.

23 MR. FELICIANO: So if Mr. Renteria didn't testify,  
24 that wouldn't -- that would bear, have no --

25 PROSPECTIVE JUROR NO. 022: It would have nothing --

1 bear nothing on the case at all. It's what they prove.

2 MR. FELICIANO: Okay. Because I mean, as you  
3 understand, they have the burden of proof.

4 PROSPECTIVE JUROR NO. 022: Right.

5 MR. FELICIANO: And we can just sit there and  
6 actually not ask any questions and just sit there, and if they  
7 don't prove their case it's still a verdict of not guilty.

8 PROSPECTIVE JUROR NO. 022: Without a reasonable  
9 doubt.

10 MR. FELICIANO: Can you think of reasons why a person  
11 wouldn't testify?

12 PROSPECTIVE JUROR NO. 022: Well, if a person --  
13 well --

14 MR. FELICIANO: Do you think it'd be maybe nerve  
15 racking to testify?

16 PROSPECTIVE JUROR NO. 022: Well, the thing that  
17 crosses my mind right off the bat, if a person does not want  
18 to testify, okay, he's either so nervous that he'll flub up  
19 his story, and then they find a loophole and then they tear  
20 apart his credibility. So it's better for him not to testify  
21 so he doesn't ruin his credibility. But that doesn't -- not  
22 going to make me change my decision on what the defense  
23 attorney -- or the DA has to prove their case.

24 MR. FELICIANO: So --

25 PROSPECTIVE JUROR NO. 022: So basically whatever

1 evidence that we have presented before us is where we make our  
2 decision. And if someone decides to hold that evidence away  
3 from us, well, we can't make a basis on that.

4 MR. FELICIANO: Okay.

5 PROSPECTIVE JUROR NO. 022: Only what we see or hear.

6 MR. FELICIANO: Thank you, sir.

7 PROSPECTIVE JUROR NO. 021: Badge 021.

8 MR. FELICIANO: Mr. Thaler?

9 PROSPECTIVE JUROR NO. 021: That's me.

10 MR. FELICIANO: You're the aircraft controller?

11 PROSPECTIVE JUROR NO. 021: Air traffic controller.

12 MR. FELICIANO: Now, is there any reason you can  
13 think of why people wouldn't testify at their trial?

14 PROSPECTIVE JUROR NO. 021: I can't give you an  
15 answer to that right now. I listen to two sides of the story  
16 and whatever comes up, that's how I'll make my decision.

17 MR. FELICIANO: So if Mr. Renteria-Novoa didn't  
18 testify, would you hold that against him?

19 PROSPECTIVE JUROR NO. 021: No.

20 MR. FELICIANO: You could listen to everything else  
21 and make your decision based on that?

22 PROSPECTIVE JUROR NO. 021: Yes.

23 MR. FELICIANO: Is there anything else that we've  
24 missed that you think we should know before we select a jury?

25 PROSPECTIVE JUROR NO. 021: No.

1 MR. FELICIANO: Thank you, sir.

2 PROSPECTIVE JUROR NO. 020: 020.

3 MR. FELICIANO: Ms. Johnson?

4 PROSPECTIVE JUROR NO. 020: That's correct.

5 MR. FELICIANO: You taught -- so you were a teacher  
6 for several years?

7 PROSPECTIVE JUROR NO. 020: Fourteen.

8 MR. FELICIANO: Fourteen years. And that was in San  
9 Francisco, right?

10 PROSPECTIVE JUROR NO. 020: Yes.

11 MR. FELICIANO: Since you dealt with -- how old were  
12 the children that you taught?

13 PROSPECTIVE JUROR NO. 020: Elementary.

14 MR. FELICIANO: Anything about that experience that  
15 makes it difficult to serve on this jury?

16 PROSPECTIVE JUROR NO. 020: No.

17 MR. FELICIANO: The subject matter, is there anything  
18 about the subject matter?

19 PROSPECTIVE JUROR NO. 020: No.

20 MR. FELICIANO: And you were on a civil --

21 PROSPECTIVE JUROR NO. 020: Federal.

22 MR. FELICIANO: -- a federal civil jury?

23 PROSPECTIVE JUROR NO. 020: Yes.

24 MR. FELICIANO: It was about -- okay. So and how  
25 long ago was that?

1 PROSPECTIVE JUROR NO. 020: At least ten years, eight  
2 to ten to -- it's been quite a while.

3 MR. FELICIANO: All right. And the same -- the same  
4 thing, were the attorneys going back and forth objecting  
5 during the trial?

6 PROSPECTIVE JUROR NO. 020: Yeah, it happens.

7 MR. FELICIANO: And would you hold that against us if  
8 that's what we're doing during the trial?

9 PROSPECTIVE JUROR NO. 020: Oh, no. No, no. I watch  
10 trials all the time, the sidebars, all of it. I mean, it's  
11 just a part of the process.

12 MR. FELICIANO: Okay. So you understand that we're  
13 doing our job and that's the way that trials go?

14 PROSPECTIVE JUROR NO. 020: Exactly.

15 MR. FELICIANO: Thank you.

16 PROSPECTIVE JUROR NO. 018: 018, Glenda Page.

17 MR. FELICIANO: Now, you have six grandkids?

18 PROSPECTIVE JUROR NO. 018: Mm-hmm.

19 MR. FELICIANO: What do these allegations -- how do  
20 they make you feel considering you have so many grandkids?

21 PROSPECTIVE JUROR NO. 018: Well, the charges are  
22 horrendous. But because I don't know the background here, I  
23 have no evidence in place. I would have to hear the evidence  
24 before I could make a judgment. I have five grand-boys and  
25 one granddaughter, she's five, and I would like not to think

1 that she would have to go through something like that. But  
2 that's neither here nor there as far as this case goes.

3 MR. FELICIANO: So you think you could listen to both  
4 sides and give Mr. Renteria a fair trial?

5 PROSPECTIVE JUROR NO. 018: I think I could, yes.

6 MR. FELICIANO: Do you see your grandkids a lot?

7 PROSPECTIVE JUROR NO. 018: They all live real close,  
8 yes.

9 MR. FELICIANO: Do you ever have to judge credibility  
10 between one grandkid or another grandkid?

11 PROSPECTIVE JUROR NO. 018: Oh, yes.

12 MR. FELICIANO: And what are the type of things that  
13 you look at when you're doing that?

14 PROSPECTIVE JUROR NO. 018: A lot of it is if they  
15 need attention. I look to see if they need particular  
16 attention from me. Maybe they're tattling because they need  
17 my attention or -- I don't know. I just watch them. I pretty  
18 much -- they're little. It's the two little ones. It's the  
19 five and six-year-old that I see most often that go through  
20 that, and I just have to watch them and see how they act and  
21 what's gone on before.

22 MR. FELICIANO: So you have to look at all the  
23 circumstances?

24 PROSPECTIVE JUROR NO. 018: I have to look at all the  
25 circumstances. Sometimes I have to say, if it's something

1 minor, go work it out, you know. If it's something major,  
2 then we have to look further.

3 MR. FELICIANO: And are there times when you can't  
4 figure out what happened?

5 PROSPECTIVE JUROR NO. 018: Sure. Sure. Because  
6 they continue to tell little fibs that convolute the  
7 situation. So you just have to -- basically, like I said,  
8 then they have to work that out. That's something they have  
9 to work out with one another.

10 MR. FELICIANO: All right. Thank you, ma'am.

11 PROSPECTIVE JUROR NO. 018: Mm-hmm.

12 PROSPECTIVE JUROR NO. 028: 028.

13 MR. FELICIANO: Zero, two, eight. Mr. Carrera?

14 PROSPECTIVE JUROR NO. 028: Correct.

15 MR. FELICIANO: So what do you think of the  
16 presumption of innocence?

17 PROSPECTIVE JUROR NO. 028: I think every man has the  
18 right to a fair and equal trial. But I mean, if he's found  
19 guilty if the evidence is there, if there's conclusive  
20 evidence, then every act has a consequence. Right. And we  
21 live by our choices, so.

22 MR. FELICIANO: So what if there isn't the -- what if  
23 there isn't sufficient evidence for [inaudible]?

24 PROSPECTIVE JUROR NO. 028: Then he's found innocent.  
25 My background, just to clarify, I come from Mexico, born and



1 raised. And if I may as a disclaimer, just to refute and  
2 clarify any previous racist allegations, I have the utmost  
3 respect for America and women in general.

4 MR. FELICIANO: Thank you.

5 PROSPECTIVE JUROR NO. 028: Setting that aside, my  
6 country, it's -- our legal system, it's very contrasting.  
7 You're presumed guilty until found innocent. So obviously our  
8 laws out here are different and I -- as an American citizen, I  
9 embrace it and I think it's what it is, so.

10 MR. FELICIANO: Okay. Now, you're going to hear --  
11 well -- as far as the charges in this case, I mean, I guess we  
12 all can agree they're emotional.

13 PROSPECTIVE JUROR NO. 028: Right.

14 MR. FELICIANO: How does that play into it as far as  
15 the presumption of innocence?

16 PROSPECTIVE JUROR NO. 028: Can you elaborate? What  
17 do you mean?

18 MR. FELICIANO: Well, do you think if someone's  
19 charged with this type of crime as opposed to say, you know,  
20 breaking into a car they're more likely to be --

21 PROSPECTIVE JUROR NO. 028: Right.

22 MR. FELICIANO: -- to be guilty as opposed to the guy  
23 that broke into the car, or is it pretty much the same type of  
24 deal?

25 PROSPECTIVE JUROR NO. 028: Well, again, it depends

1 on the facts and it depends on the person's character  
2 obviously, yeah.

3 MR. FELICIANO: All right. Is there anything else  
4 you think we should know?

5 PROSPECTIVE JUROR NO. 028: No. Not that I'm  
6 aware of.

7 MR. FELICIANO: Okay. Thank you, sir.

8 PROSPECTIVE JUROR NO. 029: 029.

9 MR. FELICIANO: So you're marrying a police officer  
10 in three weeks, right?

11 PROSPECTIVE JUROR NO. 029: Yes.

12 MR. FELICIANO: Congratulations.

13 PROSPECTIVE JUROR NO. 029: Thank you.

14 MR. FELICIANO: And does your fiance talk about his  
15 work a lot?

16 PROSPECTIVE JUROR NO. 029: Sometimes.

17 MR. FELICIANO: And what unit does he work in?

18 PROSPECTIVE JUROR NO. 029: Convention Center Area  
19 Command. It's the Strip area.

20 MR. FELICIANO: Any types -- do you know if he's  
21 worked on any types of cases like involving the charges that  
22 we're dealing with here today?

23 PROSPECTIVE JUROR NO. 029: Possibly. I don't know.  
24 If he has, he -- I don't think I've heard them from him.

25 MR. FELICIANO: And you're also a teacher?

1 PROSPECTIVE JUROR NO. 029: Yes.

2 MR. FELICIANO: And you had to report a case of child  
3 neglect?

4 PROSPECTIVE JUROR NO. 029: Correct.

5 MR. FELICIANO: When you reported that case of child  
6 neglect, what made you report it? I mean, what did you see  
7 that made you report the neglect of this child?

8 PROSPECTIVE JUROR NO. 029: Before -- the process at  
9 our school is, before it usually leads to CPS, it's called  
10 Title I services, which are sent out to the house. And  
11 basically I had a student that had worn the same clothes for  
12 four days in a row and, you know, her hygiene was very, very  
13 poor, as well as her numerous brothers and sisters.

14 So I had had a Title I visit sent to the home to  
15 check and make sure the students had proper food and clothing  
16 and attire, so.

17 MR. FELICIANO: Do you know what came of that?

18 PROSPECTIVE JUROR NO. 029: You know what. The  
19 parents moved out of our school -- my school zone, so it's  
20 then taken to another school. It becomes, I hate to say it,  
21 their issue. It's kind of out of my hands.

22 MR. FELICIANO: So you're a mandatory reporter,  
23 right?

24 PROSPECTIVE JUROR NO. 029: Correct.

25 MR. FELICIANO: And that means that if you suspect

1 any type of abuse and neglect, you have -- legally you have to  
2 report it?

3 PROSPECTIVE JUROR NO. 029: Absolutely.

4 MR. FELICIANO: And do you get in trouble if you  
5 don't report it?

6 PROSPECTIVE JUROR NO. 029: I would assume so. If --  
7 you know, if people found out that I was withholding any type  
8 of reporting, probably. I guess so.

9 MR. FELICIANO: So you kind of always err on the side  
10 of caution, I would imagine?

11 PROSPECTIVE JUROR NO. 029: Yeah. If you see  
12 something that catches your eye, it's almost -- it's common  
13 sense as a teacher to make sure you look out for the children.  
14 So if you can tell there's an issue, you go to your  
15 administration and file the necessary paperwork to be looked  
16 up on.

17 MR. FELICIANO: And this stuff is taken very  
18 seriously, I would imagine, at the school?

19 PROSPECTIVE JUROR NO. 029: Yeah. It's not an  
20 uncommon thing, especially in a school district this large, to  
21 have these issues.

22 MR. FELICIANO: Is there anything else you think we  
23 should know?

24 PROSPECTIVE JUROR NO. 029: I don't think so.

25 MR. FELICIANO: Do you think you can give

1 Mr. Renteria a fair trial?

2 PROSPECTIVE JUROR NO. 029: Yes.

3 MR. FELICIANO: Thank you.

4 PROSPECTIVE JUROR NO. 030: 030, Jeff Meckley.

5 MR. FELICIANO: Okay. You have a son and a daughter?

6 PROSPECTIVE JUROR NO. 030: Yes.

7 MR. FELICIANO: And you've at some point when they  
8 were younger had to deal with, I guess, fights between them?

9 PROSPECTIVE JUROR NO. 030: I was a single parent, so  
10 I was the -- the negotiator, the referee, yes.

11 MR. FELICIANO: Did they ever lie to you?

12 PROSPECTIVE JUROR NO. 030: Sure.

13 MR. FELICIANO: And would you have to judge their  
14 credibility?

15 PROSPECTIVE JUROR NO. 030: Yes.

16 MR. FELICIANO: And what types of things did you do  
17 to do that?

18 PROSPECTIVE JUROR NO. 030: Put them both in the same  
19 room and tell them not to come out until they resolved their  
20 issue. And it's amazing how fast they resolved their issues,  
21 so.

22 MR. FELICIANO: So it's very effective?

23 PROSPECTIVE JUROR NO. 030: Yeah. It works.

24 MR. FELICIANO: So you didn't have to get into who  
25 was telling what story, what made sense, that kind of thing?

1 PROSPECTIVE JUROR NO. 030: Sometimes. Sometimes you  
2 had to. And but I think by nature kids really don't want to  
3 lie. I think they want to tell the truth. And we'd just sit  
4 down and talk about it and bring the Lord into it, and usually  
5 the truth comes out.

6 MR. FELICIANO: Do you think a child could ever lie  
7 about allegations like the allegations you've heard in this  
8 case?

9 PROSPECTIVE JUROR NO. 030: I think kids can lie  
10 about anything.

11 MR. FELICIANO: All right. Thank you, sir.

12 PROSPECTIVE JUROR NO. 031: 031, Dell.

13 MR. FELICIANO: You said you had some problem  
14 possibly being fair in this case?

15 PROSPECTIVE JUROR NO. 031: My only issue is I am  
16 very -- I have very protective instinct for girls in general.

17 MR. FELICIANO: All right. Now, protective, but do  
18 you think that would affect your ability to --

19 PROSPECTIVE JUROR NO. 031: Oh, I've definitely had  
20 students who were female who lied. So I'm aware that just  
21 because -- you know, just because I have that instinct doesn't  
22 mean that somebody wouldn't take advantage of it or, you know,  
23 or lie about what they -- what had happened.

24 MR. FELICIANO: So could you look at all the other  
25 circumstances and come up with what you think is the truth?

1 PROSPECTIVE JUROR NO. 031: There are three sides to  
2 every story; yours, mine and the truth, and I would try to  
3 find that as best I could depending on how the story was told.

4 MR. FELICIANO: And you were a victim of a car  
5 burglary.

6 PROSPECTIVE JUROR NO. 031: Yeah.

7 MR. FELICIANO: Was that investigated at all?

8 PROSPECTIVE JUROR NO. 031: No. I had a -- there  
9 was -- I had a close friend whose, you know, whose car, whose  
10 house I was watching, and I doubt they investigated it. It  
11 wasn't a big deal.

12 MR. FELICIANO: Not much was taken or anything like  
13 that?

14 PROSPECTIVE JUROR NO. 031: No. It was -- yeah, I  
15 think they took some change or something like that. It wasn't  
16 much.

17 MR. FELICIANO: And you've had to report what,  
18 pinching of a student?

19 PROSPECTIVE JUROR NO. 031: I didn't report it, no.  
20 It was just a teacher I knew at my school, and it's a pending  
21 case. So --

22 MR. FELICIANO: By a parent?

23 PROSPECTIVE JUROR NO. 031: Yeah. A parent filed  
24 against the teacher, yeah.

25 MR. FELICIANO: So if you as a mandatory reporter, if

1 that was something that you were involved in, you would have  
2 to report it [inaudible]?

3 PROSPECTIVE JUROR NO. 031: Yeah. And it wasn't  
4 even -- it was not even attached to school activities. It was  
5 something outside of school activities, so I wasn't there at  
6 all. I was just privy to the information, yeah. That's it.

7 MR. FELICIANO: Is there any reason, do you think,  
8 that you can't give Mr. Renteria-Novoa a fair trial?

9 PROSPECTIVE JUROR NO. 031: No.

10 MR. FELICIANO: Thank you.

11 Is that 032?

12 PROSPECTIVE JUROR NO. 032: 0032.

13 MR. FELICIANO: Mr. Bean?

14 PROSPECTIVE JUROR NO. 032: That's right.

15 MR. FELICIANO: I know we talked about some things  
16 that happened in your history that were difficult to talk  
17 about yesterday.

18 PROSPECTIVE JUROR NO. 032: That's right. It's more  
19 difficult because I've got to bring it up in front of a room  
20 full of people I don't even know. It's not something I often  
21 talk about at home or anywhere.

22 MR. FELICIANO: Understood. And we're sorry that we  
23 have to get into that, but --

24 PROSPECTIVE JUROR NO. 032: I raised my hand and said  
25 I'd tell the truth.



1 MR. FELICIANO: Okay. Thank you. That's all we're  
2 asking. And I don't want to get into specifics, but that  
3 experience seems like it was very traumatic for you, and still  
4 to this day.

5 PROSPECTIVE JUROR NO. 032: Sure.

6 MR. FELICIANO: Is that something that you think will  
7 affect your ability to be fair here?

8 PROSPECTIVE JUROR NO. 032: No. Listening to all  
9 this and stuff, I realize that we need to listen to both sides  
10 and find the truth.

11 MR. FELICIANO: So if you found that the State did  
12 not prove their case beyond a reasonable doubt, how would  
13 you -- how would you vote?

14 PROSPECTIVE JUROR NO. 032: Then you have to go with  
15 the rule of the court system, not guilty.

16 MR. FELICIANO: All right. Thank you, sir.

17 PROSPECTIVE JUROR NO. 035: 035.

18 MR. FELICIANO: Ms. Moreno-Zepeda?

19 PROSPECTIVE JUROR NO. 035: Mm-hmm.

20 MR. FELICIANO: Now, you heard us talk about the  
21 presumption of innocence and how everyone's presumed innocent.  
22 How does that make you feel? What do you think about that  
23 principle?

24 PROSPECTIVE JUROR NO. 035: I mean, it is our justice  
25 system and that's how it's built, so that's what we have to

1 follow.

2 MR. FELICIANO: So as Mr. Renteria-Novoa sits there  
3 right now, is he guilty or not guilty?

4 PROSPECTIVE JUROR NO. 035: Not guilty.

5 MR. FELICIANO: And why is that?

6 PROSPECTIVE JUROR NO. 035: Because he hasn't been  
7 proven guilty yet.

8 MR. FELICIANO: So if the State, after they present  
9 all their witnesses and you feel that they haven't proven  
10 their case, what would be your vote for, guilt or not guilty?

11 PROSPECTIVE JUROR NO. 035: I guess not guilty. It's  
12 just really hard to say because I haven't heard all the facts  
13 yet.

14 MR. FELICIANO: And considering the nature of those  
15 charges, does that factor into it in any way as far as your  
16 ability to be fair?

17 PROSPECTIVE JUROR NO. 035: It is a very heinous  
18 crime in my eyes. I don't see why anybody would lie about  
19 something like that, especially if it happened so long ago,  
20 for her to, you know, bring those feelings back and just talk  
21 about that, it's just really hard to know that she's lying  
22 about something like that. I just...

23 MR. FELICIANO: Okay. So do you think that some  
24 child would never lie in that circumstance, or they could  
25 possibly lie?

1 PROSPECTIVE JUROR NO. 035: I mean, there is that  
2 possibility. But I believe she's 19 years old now, so for her  
3 to just revisit that and bring that all to light and want to  
4 go through all of this is just hard to, you know, really tell  
5 that she's -- wouldn't lie about that.

6 MR. FELICIANO: Okay. All right. Thank you.

7 PROSPECTIVE JUROR NO. 037: 037.

8 MR. FELICIANO: You're currently a student?

9 PROSPECTIVE JUROR NO. 037: Yes.

10 MR. FELICIANO: Okay. And you don't deal with  
11 children, or do you deal with children at all?

12 PROSPECTIVE JUROR NO. 037: No.

13 MR. FELICIANO: And we talked a little bit earlier  
14 about police investigations, and if the government had a case  
15 say where they didn't have fingerprints or something like  
16 that, how would that make you feel?

17 PROSPECTIVE JUROR NO. 037: It happens.

18 MR. FELICIANO: What do you -- you mean [inaudible]?

19 PROSPECTIVE JUROR NO. 037: There are times when all  
20 you have is the word of somebody, you don't have any DNA or  
21 fingerprint evidence. It just sometimes happens.

22 MR. FELICIANO: It just happens they have what they  
23 have to work with?

24 PROSPECTIVE JUROR NO. 037: You work with what you  
25 have.

1 MR. FELICIANO: So if it comes down to the word of  
2 two people, how do you judge their -- who's credible and who's  
3 not credible?

4 PROSPECTIVE JUROR NO. 037: Body language, attitude,  
5 things like that.

6 MR. FELICIANO: What about an inconsistent story, say  
7 telling a story one day one way and then a different day a  
8 different way, would that bear into your decision if they're  
9 credible or not?

10 PROSPECTIVE JUROR NO. 037: If the story changes, it  
11 probably wasn't true to begin with, because the truth doesn't  
12 change.

13 MR. FELICIANO: Okay. So if you're telling the truth  
14 it should be easy to remember, right?

15 PROSPECTIVE JUROR NO. 037: Yeah.

16 MR. FELICIANO: All right. And lies seem to be  
17 harder to keep track of?

18 PROSPECTIVE JUROR NO. 037: Yeah. If you're going to  
19 lie, keep your story straight, because sometimes it's  
20 incredibly obvious when you're lying about it.

21 MR. FELICIANO: So like adding big details or  
22 deleting big details to a version of events, that might be  
23 something that you would look at and think somebody might be  
24 lying?

25 PROSPECTIVE JUROR NO. 037: Yeah.

1 MR. FELICIANO: Okay. All right. Thank you.

2 PROSPECTIVE JUROR NO. 064: 064.

3 MR. FELICIANO: Okay. You said -- is it Ms. Temple?

4 PROSPECTIVE JUROR NO. 064: Yes.

5 MR. FELICIANO: You said your son was a victim of  
6 attempt murder?

7 PROSPECTIVE JUROR NO. 064: Yes.

8 MR. FELICIANO: Did they catch the guys?

9 PROSPECTIVE JUROR NO. 064: [Inaudible.]

10 MR. FELICIANO: Were you satisfied with the way the  
11 police handled it?

12 PROSPECTIVE JUROR NO. 064: Yes.

13 MR. FELICIANO: Did they have to do any type of  
14 forensic work or anything like that?

15 PROSPECTIVE JUROR NO. 064: No.

16 MR. FELICIANO: Okay. They just pretty much knew who  
17 it was and caught him?

18 PROSPECTIVE JUROR NO. 064: [Inaudible.]

19 MR. FELICIANO: Did they have to do, if you know, any  
20 type of investigation?

21 PROSPECTIVE JUROR NO. 064: [Inaudible.] Not to my  
22 knowledge, because it was so many witnesses that it was  
23 [inaudible].

24 THE COURT: You need to repeat that.

25 PROSPECTIVE JUROR NO. 064: It was an altercation, a

1 fight, and during the altercation the offender pulled out a  
2 gun and shot my son.

3 MR. FELICIANO: And you also have two granddaughters?

4 PROSPECTIVE JUROR NO. 064: One.

5 MR. FELICIANO: I'm sorry. One. And the nature of  
6 these charges, how do they make you feel?

7 PROSPECTIVE JUROR NO. 064: Oh, these charges?

8 MR. FELICIANO: The charges that we're here for.

9 PROSPECTIVE JUROR NO. 064: I really kind of have  
10 mixed feelings. Because I've been in the situation with both,  
11 with a five-year-old that I feel that doesn't have a voice of  
12 sexual abuse, and then a 16-year-old that does have a voice of  
13 sexual abuse and lied about it.

14 So my feelings is, is on the scale either way.  
15 Because the five-year-old was sexually abused by her mom's  
16 boyfriend and she couldn't talk about it. The 16-year-old was  
17 dating an older guy and he chose to cut it off once he learned  
18 her age, her true age, and she lied about it. So it's really  
19 basically on the scale.

20 MR. FELICIANO: So you can -- it looks like you've  
21 seen both sides --

22 PROSPECTIVE JUROR NO. 064: Exactly.

23 MR. FELICIANO: -- both sides of it.

24 PROSPECTIVE JUROR NO. 064: Exactly.

25 MR. FELICIANO: So do you think that gives you a good

1 perspective into these types of cases that would be valuable?

2 PROSPECTIVE JUROR NO. 064: Everybody lies. But I  
3 don't think that a five-year-old would lie about anything like  
4 that.

5 MR. FELICIANO: But a 16-year-old maybe?

6 PROSPECTIVE JUROR NO. 064: Maybe, maybe not. It  
7 depends on the situation.

8 MR. FELICIANO: How did you know she was lying?

9 PROSPECTIVE JUROR NO. 064: She was a close friend of  
10 my son, and it was a very public case that was in the media  
11 and he wasn't found guilty. He -- and it was just she lied.  
12 To me basically, I feel like her parents prostituted her, so.

13 MR. FELICIANO: Okay. All right. Is there anything  
14 else? I'm sorry.

15 PROSPECTIVE JUROR NO. 064: [Inaudible] he was a  
16 person of stature.

17 MR. FELICIANO: Is there anything else you think we  
18 should know about you before we pick our jury?

19 PROSPECTIVE JUROR NO. 064: No.

20 MR. FELICIANO: Okay. Thank you, ma'am.

21 PROSPECTIVE JUROR NO. 039: 039.

22 MR. FELICIANO: Mr. Gebrechristos?

23 PROSPECTIVE JUROR NO. 039: [Inaudible.]

24 MR. FELICIANO: And you don't have any children, or  
25 you do?

1 PROSPECTIVE JUROR NO. 039: I don't.

2 MR. FELICIANO: You don't. Okay. Now, if a person  
3 is a victim of a crime and it takes them a while to report it,  
4 do you think that makes any difference as far as whether  
5 they're telling the truth or not?

6 PROSPECTIVE JUROR NO. 039: I have to hear the  
7 reasons as to why they didn't report it. There are a lot of  
8 cases that are not reported.

9 MR. FELICIANO: Say well, like just say you, you're  
10 walking in today and your wallet, somebody picks your pocket;  
11 is that something that you would immediately report?

12 PROSPECTIVE JUROR NO. 039: [No audible response.]

13 MR. FELICIANO: Would you go to the police  
14 immediately or would you wait a while?

15 PROSPECTIVE JUROR NO. 039: I will immediately  
16 report it.

17 MR. FELICIANO: Okay. So if you waited a month it  
18 would maybe be a little suspect that -- don't you think?

19 PROSPECTIVE JUROR NO. 039: In that particular case  
20 it might be.

21 MR. FELICIANO: So it just depends, like you're  
22 saying, on the nature of the offense and all the circumstances  
23 surrounding it?

24 PROSPECTIVE JUROR NO. 039: Yes.

25 MR. FELICIANO: Okay. So there are good reasons why



1 a person might not say they were a victim of a crime for a  
2 while? Like can you think of any?

3 PROSPECTIVE JUROR NO. 039: Explain that to me again.

4 MR. FELICIANO: Well, what are some reasons why  
5 someone might not report a crime?

6 PROSPECTIVE JUROR NO. 039: Well, maybe this  
7 particular case it might be that at the time she's young and  
8 she didn't know the magnitude of the offense, or maybe some  
9 other circumstance that she wouldn't be able to report it  
10 right away.

11 MR. FELICIANO: Okay. Is there anything else you  
12 think we should know about you?

13 PROSPECTIVE JUROR NO. 039: No.

14 MR. FELICIANO: Thank you.

15 PROSPECTIVE JUROR NO. 059: Badge No. 059.

16 MR. FELICIANO: Is that Ms. Crockett?

17 PROSPECTIVE JUROR NO. 059: Yes.

18 MR. FELICIANO: It looks like you've had some -- your  
19 cousin was a victim?

20 PROSPECTIVE JUROR NO. 059: Yes.

21 MR. FELICIANO: And hearing these charges, how does  
22 that make you feel?

23 PROSPECTIVE JUROR NO. 059: Because it involves a  
24 child it makes it a little mixed feelings about it.

25 MR. FELICIANO: Is that something that you think

1 you'll be able to -- be able to handle?

2 PROSPECTIVE JUROR NO. 059: Yes. I would be able to,  
3 long as I can hear both sides of the stories. And I heard  
4 earlier you saying about if they don't testify that, you know,  
5 I would have to definitely hear both sides of the story. I  
6 know it's their job to make the case, but I would also have to  
7 hear the person whose life is at stake. I would have to hear  
8 what they have to say.

9 MR. FELICIANO: So if the person doesn't testify,  
10 meaning here in this case that would be Mr. Renteria-Novoa, if  
11 he doesn't testify, would you find him automatically guilty?

12 PROSPECTIVE JUROR NO. 059: I wouldn't find him  
13 automatically guilty, but it would be hard because I would --  
14 I definitely need to hear his side of the story also.

15 MR. FELICIANO: So just so we're sure, do you think  
16 you can give him a fair trial even if we decide that he  
17 doesn't testify?

18 PROSPECTIVE JUROR NO. 059: I definitely can try.

19 MR. FELICIANO: But it sounds like you're not sure  
20 that you can be fair, is that --

21 PROSPECTIVE JUROR NO. 059: Well, I just go on a  
22 person's characteristics, their eye contact, their demeanor.  
23 That's how I -- I just not really judge a person, but that's  
24 how you get a feel about someone. And if these kind of  
25 charges were brought against me in general, I would want to

1 defend myself to, you know, so everybody can get the story.

2 MR. FELICIANO: All right. Thank you. Pass it back.

3 THE MARSHAL: Folks, please speak directly into the  
4 microphone when it's passed to you. The court recorder needs  
5 to be able to make sure she can get everything down. If you  
6 don't speak directly into the microphone it [inaudible].

7 PROSPECTIVE JUROR NO. 042: 042.

8 MR. FELICIANO: Zero, four, two?

9 PROSPECTIVE JUROR NO. 042: Yes.

10 MR. FELICIANO: Is that Ms. Trotchie?

11 PROSPECTIVE JUROR NO. 042: Trotchie.

12 MR. FELICIANO: Trotchie. Sorry about that.

13 PROSPECTIVE JUROR NO. 042: That's okay.

14 MR. FELICIANO: Now, you worked with parole and  
15 probation for a while?

16 PROSPECTIVE JUROR NO. 042: Yeah. I did an  
17 internship for about a year and a half.

18 MR. FELICIANO: And you said that you were out and  
19 you were going -- you worked on the sex offender unit?

20 PROSPECTIVE JUROR NO. 042: Yes.

21 MR. FELICIANO: Now, the people that you were  
22 supervising, or the people that were part of that unit, those  
23 are people that have already been convicted of crimes, right?

24 PROSPECTIVE JUROR NO. 042: Yes.

25 MR. FELICIANO: There were no people that were just

1 accused of crimes?

2 PROSPECTIVE JUROR NO. 042: No.

3 MR. FELICIANO: They were -- I guess they were people  
4 that either had been to prison or people that were on  
5 probation; is that the way it worked?

6 PROSPECTIVE JUROR NO. 042: Yes.

7 MR. FELICIANO: And you said that you saw a lot of  
8 things there that would -- where it would be a problem for you  
9 to be fair?

10 PROSPECTIVE JUROR NO. 042: Yes. Just like reading a  
11 lot of the people's charts, I guess you can say, their file,  
12 their profile.

13 MR. FELICIANO: Okay.

14 PROSPECTIVE JUROR NO. 042: Because I mean, it's all  
15 there, like what they were charged with. It's pretty graphic  
16 in detail.

17 MR. FELICIANO: Now, here, I mean, all we have is an  
18 allegation.

19 PROSPECTIVE JUROR NO. 042: Yes.

20 MR. FELICIANO: We don't have a person that's been  
21 convicted of any crime.

22 PROSPECTIVE JUROR NO. 042: Mm-hmm.

23 MR. FELICIANO: Can you separate that?

24 PROSPECTIVE JUROR NO. 042: I don't think I can look  
25 past the fact that he's getting charged -- he's been charged

1 with 37, right, if I'm not wrong?

2 MR. FELICIANO: Yes.

3 PROSPECTIVE JUROR NO. 042: There's 37 allegations  
4 against him, right?

5 MR. FELICIANO: Correct.

6 PROSPECTIVE JUROR NO. 042: I don't -- honestly, I  
7 don't think I can look past that, because nobody's just going  
8 to have 37 charges hanging over their head. Like I just don't  
9 understand how somebody cannot be proved not guilty.  
10 Thirty-seven charges is a lot of charges to carry over  
11 somebody's head.

12 MR. FELICIANO: So as he sits here now, have you  
13 determined whether -- have you made the determination that he  
14 is guilty?

15 PROSPECTIVE JUROR NO. 042: I believe so.

16 MR. FELICIANO: I have a motion, Judge.

17 THE COURT: Well, Ms. Trotchie, explain to me why you  
18 believe so. You've heard no evidence here, right?

19 PROSPECTIVE JUROR NO. 042: Yes.

20 THE COURT: Would you agree with that?

21 PROSPECTIVE JUROR NO. 042: Yes.

22 THE COURT: And all that you know is that he sits  
23 here accused by the State of some crime.

24 PROSPECTIVE JUROR NO. 042: Correct.

25 THE COURT: So based on what do you believe that he's

1 guilty; just the fact that he's been accused?

2 PROSPECTIVE JUROR NO. 042: Just with the fact that  
3 those 37 accusations that are going against him, I just don't  
4 look at that as normal.

5 THE COURT: I'm not sure what you mean by normal.

6 PROSPECTIVE JUROR NO. 042: Like to have 37 charges  
7 hanging over your head, how do you find somebody not guilty?  
8 Those are a lot of charges. It's one thing if it was two or  
9 three, then yeah, by all means I can do a fair trial.  
10 But 37 --

11 THE COURT: And why does the number matter?

12 PROSPECTIVE JUROR NO. 042: Those are a lot of  
13 charges.

14 THE COURT: I mean, hypothetically, you know, if the  
15 allegation is false, why does it matter if the allegation is  
16 made falsely once or a hundred times? Why does that matter?

17 Like if I say right now you -- you know, my car was  
18 scratched in the parking lot at Target tonight, I think you  
19 did it, and I repeat that statement a hundred times, does that  
20 make it true?

21 PROSPECTIVE JUROR NO. 042: No.

22 THE COURT: Then why does the number of charges  
23 matter to you?

24 PROSPECTIVE JUROR NO. 042: Because it's just a  
25 serious charge. Like I just feel very uncomfortable. I mean,

1 I'm a mother of two young girls and I live next to a sex  
2 offender, so it's just not making the situation any better.

3 THE COURT: Okay. Well, now I'm a little -- you're  
4 talking about something completely different now. All right.  
5 Let's go back to the original question, which was why does the  
6 number of charges -- I know -- it sounds like there's a  
7 different issue as to whether or not, you know, your living  
8 near someone else who apparently is convicted of these crimes.

9 But the question is, I mean, why does it matter to  
10 you? You said that if there were only two or three counts you  
11 could be fair and impartial, if it's 37 you can't, and I'm  
12 still wondering why that is.

13 PROSPECTIVE JUROR NO. 042: It's just very disturbing  
14 to me. I just -- to have 37, like I mean, yeah, it's a  
15 number, but obviously the accusations are very serious.

16 THE COURT: Well, I mean, granted the accusations are  
17 very serious, but your job as a juror would be to determine  
18 whether or not the accusations are true.

19 PROSPECTIVE JUROR NO. 042: True.

20 THE COURT: Do you understand that?

21 PROSPECTIVE JUROR NO. 042: Yes.

22 THE COURT: They could be true, they could be false.  
23 Some could be true, some could be false, right?

24 PROSPECTIVE JUROR NO. 042: Yes.

25 THE COURT: So why, you know -- I guess the question

1 is do you think that you can make that distinction, or is just  
2 the sheer number of charges going to interfere with your  
3 ability to actually sift through the charges one by one and  
4 determine whether or not they're actually true?

5 PROSPECTIVE JUROR NO. 042: As much as I would want  
6 to say that I can possibly give a fair trial, I just don't  
7 think I can, because I wouldn't be able to look past the  
8 number.

9 THE COURT: All right. Let me ask it this way. What  
10 would be the number of charges that would be acceptable to you  
11 so that you could actually be a fair and impartial juror? You  
12 said two or three is okay. Is it five, is it ten, is it 15?

13 PROSPECTIVE JUROR NO. 042: Just period, having those  
14 numbers is a lot.

15 THE COURT: All right. Ms. Fleck, does the State  
16 wish to traverse?

17 MS. FLECK: No, thank you, Your Honor.

18 THE COURT: Ms. Trotchie, let's do this. Go ahead  
19 and have a seat in the back of the courtroom.

20 We're going to have to pull the next person, who is  
21 Ms. Martinez; is that correct?

22 THE CLERK: Correct. Badge No. 069, Armida Martinez.

23 THE COURT: Do we have headphones for her?

24 THE CLERK: Yes. She already has them on.

25 THE COURT: Okay. Excellent. All right. Ms. -- all



1 right. Yeah, let's leave her there. Do you guys have an  
2 objection if we leave her there so that she can be with the  
3 interpreter?

4 MR. FELICIANO: No, Judge.

5 THE COURT: All right. Ms. Martinez, since this is  
6 our first opportunity to speak with you, let me ask you a  
7 couple of questions. Can you give us a brief biographical  
8 sketch? What do you do for a living, are you married, if  
9 you're married what does your husband do?

10 PROSPECTIVE JUROR NO. 069: I am divorced.

11 THE COURT: What do you do? Where do you work?

12 PROSPECTIVE JUROR NO. 069: I'm unemployed. I'm a  
13 stay home person. I take care of my grandchildren.

14 THE COURT: How old are they?

15 PROSPECTIVE JUROR NO. 069: Nine and ten.

16 THE COURT: Are they boys or girls?

17 PROSPECTIVE JUROR NO. 069: Boys and girls. Boy and  
18 girl.

19 THE COURT: All right. One boy, one girl. How  
20 many -- those are your grandchildren. How many kids do you  
21 have?

22 PROSPECTIVE JUROR NO. 069: Five.

23 THE COURT: Five kids. Boys or girls, and how old  
24 are they?

25 PROSPECTIVE JUROR NO. 069: Four boys, one girl.

1 THE COURT: And how old are they?

2 PROSPECTIVE JUROR NO. 069: My youngest is 27, 30,  
3 33, 34, 35.

4 THE COURT: Have you ever served on a jury before?

5 PROSPECTIVE JUROR NO. 069: No.

6 THE COURT: Have you or anyone closely associated  
7 with you ever been the victim of a crime either sexual in  
8 nature or otherwise?

9 PROSPECTIVE JUROR NO. 069: No.

10 THE COURT: Have you or anyone closely associated  
11 with you ever been accused of a crime, whether or not there  
12 was a conviction, either sexual in nature or otherwise?

13 PROSPECTIVE JUROR NO. 069: No.

14 THE COURT: Ms. Fleck, do you have any questions for  
15 Ms. Martinez?

16 MS. FLECK: I do. Thank you, Your Honor.

17 Good afternoon, Ms. Martinez. Today, now that you  
18 have an interpreter, do you feel more comfortable  
19 participating in this process?

20 PROSPECTIVE JUROR NO. 069: Yes.

21 MS. FLECK: Yes. Anything that was said yesterday or  
22 today, any questions asked or any answers of other jurors that  
23 made you think, you know, maybe this isn't the right jury for  
24 me to sit on?

25 PROSPECTIVE JUROR NO. 069: No.

1 MS. FLECK: Having your mindset and your experiences  
2 from both before you moved to the United States and now, do  
3 you think you have the mindset to be fair to both the State  
4 and the defense?

5 PROSPECTIVE JUROR NO. 069: Yes.

6 MS. FLECK: And promise that you'll follow the law  
7 that the judge gives you, even if it's different from the law  
8 that you grew up with?

9 PROSPECTIVE JUROR NO. 069: Yes.

10 MS. FLECK: If we prove our case beyond a reasonable  
11 doubt, do you have any problem finding the defendant guilty?

12 PROSPECTIVE JUROR NO. 069: I don't know.

13 MS. FLECK: You don't know?

14 PROSPECTIVE JUROR NO. 069: No.

15 MS. FLECK: Okay. Just to clarify, because I don't  
16 know if it's a -- I don't know if it's an interpretation  
17 issue. But do you have any problems sitting in judgment,  
18 deliberating, going through the process of ultimately coming  
19 to a decision about the guilt of the defendant? Any problem  
20 with that?

21 PROSPECTIVE JUROR NO. 069: No.

22 MS. FLECK: Okay. All right. Thank you.

23 Pass for cause.

24 THE COURT: All right. Mr. Feliciano.

25 MR. FELICIANO: Ma'am, what if the State does not

1 prove their case beyond a reasonable doubt, how would you --  
2 how would you vote; guilty or not guilty?

3 PROSPECTIVE JUROR NO. 069: It's going to be very  
4 hard, because if they cannot prove their case [inaudible].

5 MR. FELICIANO: I'm sorry?

6 PROSPECTIVE JUROR NO. 069: It's going to make a --  
7 it's going to be difficult to make a decision, because if they  
8 cannot decide their case, how can I do it?

9 MR. FELICIANO: Can you find Mr. Renteria-Novoa not  
10 guilty if they don't prove their case?

11 PROSPECTIVE JUROR NO. 069: For me it's -- could you  
12 repeat the question, please.

13 MR. FELICIANO: If the State presents all their  
14 evidence and you're not convinced that they've proven their  
15 case beyond a reasonable doubt, can you find him not guilty?

16 PROSPECTIVE JUROR NO. 069: Yes.

17 MR. FELICIANO: Now, it's -- you have several  
18 children and several grandchildren. Do the nature of these  
19 allegations, is it difficult for you to sit on a trial like  
20 this knowing the nature of those allegations?

21 PROSPECTIVE JUROR NO. 069: No.

22 MR. FELICIANO: Thank you, ma'am.

23 MS. FLECK: Judge, can we approach?

24 THE COURT: Sure.

25 (Bench conference.)

1 MS. FLECK: Can you just flesh that out? Because I  
2 don't know what that means, if the State can't decide their  
3 case how am I supposed to be able to. What does that mean?

4 THE COURT: Yeah. I'm not sure she -- I can't tell  
5 if she doesn't understand it with the translation [inaudible]  
6 I'm not quite clear on.

7 MS. FLECK: Well, that's what I don't understand  
8 either, so that's why. But does that mean that she can't sit  
9 in judgment? Is that saying like if we don't know what  
10 happened how is she supposed to decide?

11 THE COURT: Right. I'll ask her --

12 MS. FLECK: And then also with Crockett, the one  
13 thing that I wanted cleared up with her is I don't know if she  
14 was saying if the defendant doesn't testify then she can't  
15 find him guilty, or if the defendant doesn't testify then she  
16 will absolutely find him guilty. But I don't think that  
17 that's clear. She's basically saying she has to hear from  
18 him, and if she has to hear from him, then we have to get rid  
19 of her.

20 THE COURT: I'm not sure she said that. I mean, I --  
21 what she said kind of was not entirely clear because, you  
22 know, [inaudible].

23 MS. FLECK: I agree, but that's why --

24 THE COURT: I don't think she said that she needed to  
25 hear from him. I think she said that she really wanted to

1 hear from him and, you know, I don't remember the exact word  
2 that she used. I mean, I'll ask if you want, but my  
3 recollection is she said that it would be harder for her if  
4 she didn't hear from him, but I don't think she said that she  
5 couldn't make a decision if she didn't hear from him.

6 MS. FLECK: I thought she said she had to hear both  
7 sides.

8 THE COURT: Okay.

9 MS. FLECK: And I don't know if she was saying I have  
10 to hear both sides --

11 THE COURT: Do you remember?

12 MS. FLECK: -- and if I don't --

13 THE COURT: I don't remember exactly [inaudible].

14 MS. FELICIANO: I wrote everything down that she  
15 said. I just don't have my notes [inaudible] that she would  
16 like to hear before [inaudible].

17 THE COURT: Yeah. My impression was she said that it  
18 was really, really helpful and she really need -- I don't know  
19 if she used the word "had" or not. I honestly don't remember.

20 MS. FELICIANO: She was leaning toward finding him  
21 guilty if he didn't testify. It wasn't [inaudible].

22 THE COURT: Yeah. That was my impression too.

23 MS. FLECK: And I'm not -- I couldn't tell which way  
24 she was saying. I didn't know if she was saying if I don't  
25 hear both sides of the story I can't make a decision as to his

1 guilt, or if she was saying if I don't hear from him I'll find  
2 him guilty. Either way, if she has to hear from him she has,  
3 you know -- I mean --

4 MS. FELICIANO: It was cleared up though,  
5 extensively. I mean, it was cleared up.

6 THE COURT: Yeah. I thought it was --

7 MS. FLECK: Okay. Then let it go. That's fine.

8 THE COURT: Okay. But I can certainly ask her,  
9 because I'm a little confused by her response. Because I  
10 don't know if it's a translation error or what, but I'll ask  
11 Ms. Martinez.

12 MR. FELICIANO: Do you want to do that now?

13 THE COURT: I'll just do it [inaudible].

14 (End bench conference.)

15 THE COURT: Ms. Martinez, let me just ask you a  
16 couple questions to clarify, because I'm not sure I understood  
17 what you were saying. And I know that since there's an  
18 interpreter there, sometimes it's, you know, the words are  
19 maybe used not as precisely as could be.

20 In this case the State has the burden of proving that  
21 the defendant is guilty beyond a reasonable doubt. Okay.  
22 That means if they don't prove to you that he actually  
23 committed the crime that they accused him of committing, okay,  
24 that means if, if they're unable to prove to you that he is  
25 guilty, that means that your job is you have to find him not

1 guilty. Do you understand what I just said?

2 PROSPECTIVE JUROR NO. 069: Yes, Your Honor.

3 THE COURT: And you agree with what I just said?

4 PROSPECTIVE JUROR NO. 069: Yes.

5 THE COURT: And you could do that if you were asked  
6 to serve as a juror in this case?

7 PROSPECTIVE JUROR NO. 069: Yes.

8 THE COURT: Okay. Thanks for the clarification. I  
9 appreciate it.

10 Okay. Mr. Feliciano, you can resume.

11 PROSPECTIVE JUROR NO. 043: 043.

12 MR. FELICIANO: Zero, four, three. So you're a  
13 Spanish instructor?

14 PROSPECTIVE JUROR NO. 043: Yes.

15 MR. FELICIANO: Do you deal with children at all?

16 PROSPECTIVE JUROR NO. 043: No.

17 MR. FELICIANO: Anything about the charges make it  
18 difficult for you to be fair in this case?

19 PROSPECTIVE JUROR NO. 043: To be fair, no, of course  
20 not.

21 MR. FELICIANO: So if the State cannot prove their  
22 case beyond a reasonable doubt, do you have any issues  
23 bringing back a not guilty verdict?

24 PROSPECTIVE JUROR NO. 043: No. I don't have any  
25 problem.



1 MR. FELICIANO: All right. Thank you, ma'am.

2 PROSPECTIVE JUROR NO. 043: Can I just add one thing?

3 MR. FELICIANO: Sure.

4 PROSPECTIVE JUROR NO. 043: I'm pregnant and I'm  
5 starting my eighth month. So I just wanted to clarify that,  
6 because I don't think yesterday that was noticed. I just  
7 wanted to add that.

8 MR. FELICIANO: Okay. Do you think you're going to  
9 be okay for this week?

10 PROSPECTIVE JUROR NO. 043: I just need to go to the  
11 restroom a lot obviously, and just stand up sometimes, because  
12 I get tired of sitting and that sort of thing. And I do need  
13 to drink a lot of water, so I cannot help going to the  
14 restroom a lot. I would just ask that to be considered,  
15 that's all.

16 THE COURT: Okay. Let me ask you to do this. If you  
17 need to use the restroom or if you feel nauseous or if you  
18 need any other -- just please raise your hand and wave the  
19 marshal over. I'm happy to take a break and accommodate you.  
20 Okay.

21 PROSPECTIVE JUROR NO. 043: Yes.

22 THE COURT: I know it's kind of an inconvenience.

23 PROSPECTIVE JUROR NO. 043: Okay.

24 THE COURT: All right. I appreciate it. Thank you.

25 PROSPECTIVE JUROR NO. 043: All right. No problem.

1 Thank you, sir.

2 PROSPECTIVE JUROR NO. 044: 044, Nicol.

3 MR. FELICIANO: Mr. Nicol, you were a victim of a  
4 home invasion in California; is that --

5 PROSPECTIVE JUROR NO. 044: Correct.

6 MR. FELICIANO: And I have here a note that you were  
7 not satisfied with the law enforcement, with what they did; is  
8 that correct? Is my note correct?

9 PROSPECTIVE JUROR NO. 044: It's a long story but,  
10 you know, just to shorten things up, it was a -- it was a gang  
11 hit. Their hit man screwed up and went -- came to the wrong  
12 house and got me. I was bound, gagged and shot. And the  
13 police treated me as, you know, I was guilty. I had nothing  
14 to do with it. Once they discovered that, they just kind of  
15 let it go and there was not investigations after that. They  
16 said, No, I never found the guy, sorry.

17 MR. FELICIANO: How did they treat you like you were  
18 guilty?

19 PROSPECTIVE JUROR NO. 044: Well, you know, the way  
20 of questioning and the way they, you know, went through the  
21 house or apartment, you know, looking for evidence. You know,  
22 there was nothing there and --

23 MR. FELICIANO: Did they do forensic work in your --  
24 in your home?

25 PROSPECTIVE JUROR NO. 044: Yes.

1 MR. FELICIANO: Prints and all that kind of stuff?

2 PROSPECTIVE JUROR NO. 044: Yes.

3 MR. FELICIANO: And they still never found anybody?

4 PROSPECTIVE JUROR NO. 044: They said they didn't,  
5 no.

6 MR. FELICIANO: All right. Anything about these  
7 charges makes it difficult for you to sit on this jury?

8 PROSPECTIVE JUROR NO. 044: No.

9 MR. FELICIANO: Thank you, sir.

10 PROSPECTIVE JUROR NO. 055: 055, Nicole Quince.

11 MR. FELICIANO: Are you currently a student?

12 PROSPECTIVE JUROR NO. 055: Yes.

13 MR. FELICIANO: What are you studying?

14 PROSPECTIVE JUROR NO. 055: Math.

15 MR. FELICIANO: No children or anything like that?

16 PROSPECTIVE JUROR NO. 055: No children.

17 MR. FELICIANO: Okay. Do you deal with children at  
18 all?

19 PROSPECTIVE JUROR NO. 055: No.

20 MR. FELICIANO: Any thoughts on if Mr. Renteria Novoa  
21 doesn't testify? What do you think about that?

22 PROSPECTIVE JUROR NO. 055: It wouldn't sway me one  
23 way or another. It's his right.

24 MR. FELICIANO: So do you know of reasons why someone  
25 might not testify?

1 PROSPECTIVE JUROR NO. 055: Maybe they just feel that  
2 they're a bad speaker and they could say something and  
3 incriminate themselves. They may not trust the line of  
4 questioning, thinking they can be easily tricked. There could  
5 be different reasons.

6 MR. FELICIANO: Could be nervous too, is that --

7 PROSPECTIVE JUROR NO. 055: Yes.

8 MR. FELICIANO: Anything else you think we need to  
9 know?

10 PROSPECTIVE JUROR NO. 055: It doesn't seem that this  
11 trial will take very long, but I do start school again on  
12 June 4th.

13 MR. FELICIANO: Oh, we'll be done.

14 PROSPECTIVE JUROR NO. 055: Right. I just hope so,  
15 because this process [unintelligible] a little long, so I just  
16 wanted you to make a note of it.

17 MR. FELICIANO: It speeds up right after.

18 PROSPECTIVE JUROR NO. 055: Okay. I hope so.

19 MR. FELICIANO: Thank you.

20 PROSPECTIVE JUROR NO. 046: 046.

21 MR. FELICIANO: Mr. Ferguson, you said that it would  
22 be hard to be impartial in this case because you have two  
23 girls.

24 PROSPECTIVE JUROR NO. 046: Yes. I have two girls,  
25 and I'm also the youngest of four with three older sisters.

1 MR. FELICIANO: So as Mr. Renteria-Novoa sits here,  
2 is that something that we should be concerned about, about if  
3 you're on our jury?

4 PROSPECTIVE JUROR NO. 046: To me, yes, because I  
5 grew up in a very protective family and [inaudible] --

6 THE COURT RECORDER: I can't hear him.

7 MR. FELICIANO: I'm sorry. She can't hear you.

8 PROSPECTIVE JUROR NO. 046: Oh. Yeah. I'm sorry.

9 MR. FELICIANO: Could you repeat your last answer.

10 PROSPECTIVE JUROR NO. 046: To me it would be  
11 difficult, yes. It would be -- yes.

12 MR. FELICIANO: Difficult, but is it possible?

13 PROSPECTIVE JUROR NO. 046: For me to be fair --

14 MR. FELICIANO: Yes.

15 PROSPECTIVE JUROR NO. 046: -- in this case, I'd like  
16 to do my civil duty obviously, but in this case I would say  
17 no. I don't know if I could be fair, especially if he's not  
18 going to testify and I can't watch his face and his eyes and  
19 expressions. I'm not sure if I could be fair.

20 MR. FELICIANO: And I think you -- did you have an  
21 issue with his language barriers, about --

22 PROSPECTIVE JUROR NO. 046: You know, it was that,  
23 and it was a combination of the whole day leading into the  
24 distraction from my left side of the interpretation going on  
25 all day, and it was 4:00 o'clock in the afternoon and it was

1 very distracting and it was very irritating.

2 MR. FELICIANO: So what are you -- what I think we're  
3 hearing is that although you'd like to be fair in this case,  
4 you don't think you can due to the nature of the case and due  
5 to the nature -- or due to your surrounding circumstances with  
6 your family; is that fair?

7 PROSPECTIVE JUROR NO. 046: I'd say so.

8 MR. FELICIANO: Judge, I have a motion.

9 THE COURT: Ms. Fleck, do you have any questions for  
10 Mr. Ferguson?

11 MS. FLECK: Yes. Thank you. Sorry.

12 Okay. Mr. Ferguson, we've been here for two full  
13 days, so I know that you've heard what a lot of other people  
14 have had to say. No question that this is a difficult case  
15 and these are difficult charges. We can all agree on that.  
16 Right. And you have sisters, mom, wife, whatever.

17 You don't think that you can separate and say, well,  
18 you know, while once someone would be found guilty of these  
19 charges, we can all agree that it's horrific, but that the  
20 defendant as he sits now is innocent and they're simply  
21 charges? You don't think you can separate the two?

22 PROSPECTIVE JUROR NO. 046: Well, although all the  
23 questions yesterday were repetitive, I didn't get to finish  
24 something that I would like to have said, was I was in a  
25 serious relationship with a girl that she opened up when we

1 were in our relationship about something that happened to her  
2 with her step-father and, you know, I don't think I can be  
3 fair.

4 MS. FLECK: Okay. So seeing her the victim of  
5 something of that and how it kind of manifested itself in the  
6 future, that would stick with you?

7 PROSPECTIVE JUROR NO. 046: It still has, yeah.

8 MS. FLECK: All right. Thank you.

9 I have no objection to being excused for cause.

10 THE COURT: All right. Mr. Ferguson, thank you very  
11 much for your honesty. I didn't know the information about  
12 your girlfriend. Please report to the jury services room on  
13 the third floor.

14 And we'll need the next person is --

15 THE CLERK: That's going to be Badge No. 071, Cindi  
16 Rivera.

17 THE COURT: All right. Ms. Rivera, since this is the  
18 first time we're talking with you, can you tell us what you do  
19 for a living?

20 PROSPECTIVE JUROR NO. 071: I'm a vocational rehab  
21 location counselor.

22 THE COURT: For what kind of organization, for the  
23 State or for who?

24 PROSPECTIVE JUROR NO. 071: It's a private company.

25 THE COURT: Okay. Are you married?

1 PROSPECTIVE JUROR NO. 071: No.

2 THE COURT: Any kids?

3 PROSPECTIVE JUROR NO. 071: No.

4 THE COURT: How long have you been in Vegas?

5 PROSPECTIVE JUROR NO. 071: Thirteen years.

6 THE COURT: Ever served on a jury before?

7 PROSPECTIVE JUROR NO. 071: Yes.

8 THE COURT: Where and when?

9 PROSPECTIVE JUROR NO. 071: Here in Clark County. I

10 don't know, maybe six, seven years ago.

11 THE COURT: Six, seven years ago. Was it a civil or

12 criminal case?

13 PROSPECTIVE JUROR NO. 071: Criminal.

14 THE COURT: Was it in this building or the old

15 courthouse, or was it in -- it was for Clark County, so was it

16 here, was it in Henderson, was it North Las Vegas?

17 PROSPECTIVE JUROR NO. 071: I believe it was here.

18 THE COURT: Okay. Was it a case prosecuted by the

19 Clark County District Attorney?

20 PROSPECTIVE JUROR NO. 071: Yes.

21 THE COURT: Okay. Did the case reach a verdict?

22 PROSPECTIVE JUROR NO. 071: Yes.

23 THE COURT: And were you the foreperson?

24 PROSPECTIVE JUROR NO. 071: No.

25 THE COURT: Anything about that experience that would



1 cause you to hesitate about serving as a juror in another  
2 criminal case?

3 PROSPECTIVE JUROR NO. 071: No.

4 THE COURT: Have you ever -- have you or anyone  
5 closely associated with you ever been the victim of a crime,  
6 whether sexual in nature or otherwise?

7 PROSPECTIVE JUROR NO. 071: Yes.

8 THE COURT: Who? Was that you or someone else?

9 PROSPECTIVE JUROR NO. 071: Me.

10 THE COURT: When?

11 PROSPECTIVE JUROR NO. 071: When I was younger. When  
12 I was a kid.

13 THE COURT: How old were you approximately?

14 PROSPECTIVE JUROR NO. 071: Oh, eight.

15 THE COURT: Eight. Was the perpetrator someone  
16 related to you or known to you, or a stranger?

17 PROSPECTIVE JUROR NO. 071: Yes. My mother's  
18 husband.

19 THE COURT: Was there ever a court case? Were the  
20 police called?

21 PROSPECTIVE JUROR NO. 071: No.

22 THE COURT: Can you tell us -- did you tell your mom?  
23 Did you tell anybody?

24 PROSPECTIVE JUROR NO. 071: Many years later.

25 THE COURT: Many years later. Okay. Now, how -- in

1 view of that, how do you feel about serving as a juror in this  
2 case knowing what the accusations are?

3 PROSPECTIVE JUROR NO. 071: It's uncomfortable. It's  
4 brought about a lot of memories.

5 THE COURT: Okay. But is it so uncomfortable that  
6 you couldn't be fair and impartial?

7 PROSPECTIVE JUROR NO. 071: No.

8 THE COURT: So you could, if asked to serve as a  
9 juror in this case, follow the law and listen to the evidence  
10 and make a decision based on what you find the evidence shows?

11 PROSPECTIVE JUROR NO. 071: Yes.

12 THE COURT: All right. Now, other than your mother's  
13 husband, have you or anyone closely associated with you ever  
14 been accused of a crime, whether or not there was a  
15 conviction, whether sexual in nature or otherwise?

16 PROSPECTIVE JUROR NO. 071: No.

17 THE COURT: I appreciate it.

18 Ms. Fleck, do you have questions for Ms. Rivera?

19 MS. FLECK: I do not. Thank you, Your Honor. The  
20 State will pass Ms. Rivera for cause.

21 THE COURT: All right. Mr. Feliciano.

22 MR. FELICIANO: Ms. Rivera, you said you have a  
23 brother in customs in Long Beach?

24 PROSPECTIVE JUROR NO. 071: A brother-in-law, yes.

25 MR. FELICIANO: Brother-in-law. I'm sorry.

1 PROSPECTIVE JUROR NO. 071: And he was a border  
2 patrol before then.

3 MR. FELICIANO: Okay. Did you talk to him about any  
4 type of his work -- any of his work or anything like that?

5 PROSPECTIVE JUROR NO. 071: No. Very rarely.

6 MR. FELICIANO: And how would you feel if  
7 Mr. Renteria-Novoa did not testify today, or in his trial?

8 PROSPECTIVE JUROR NO. 071: How would I feel about  
9 him not testifying?

10 MR. FELICIANO: Yes. Would that make you vote for  
11 guilt or --

12 PROSPECTIVE JUROR NO. 071: No.

13 MR. FELICIANO: So do you think you can give him a  
14 fair trial considering, all things considered?

15 PROSPECTIVE JUROR NO. 071: Yes.

16 MR. FELICIANO: Thank you.

17 PROSPECTIVE JUROR NO. 071: You're welcome.

18 PROSPECTIVE JUROR NO. 048: 048, Garwood.

19 MR. FELICIANO: Mr. Garwood, you said?

20 PROSPECTIVE JUROR NO. 048: Yes.

21 MR. FELICIANO: You had -- unfortunately, you had a  
22 sister that was a victim of a crime years ago?

23 PROSPECTIVE JUROR NO. 048: That's correct.

24 MR. FELICIANO: And that wasn't in this country,  
25 right?

1 PROSPECTIVE JUROR NO. 048: No. It was in Colombia.

2 MR. FELICIANO: Okay. And you actually testified in  
3 court?

4 PROSPECTIVE JUROR NO. 048: It was actually a hearing  
5 approximately a week after the occurrence.

6 MR. FELICIANO: And anything about that experience  
7 makes it difficult for you to be here today?

8 PROSPECTIVE JUROR NO. 048: A little bit. But I  
9 think I can be fair.

10 MR. FELICIANO: Okay. And what are the issues when  
11 you say a little bit?

12 PROSPECTIVE JUROR NO. 048: The gentleman in question  
13 was found not guilty and was let go, and our testimony was  
14 really just kind of thrown out, my testimony as well as my  
15 sister's.

16 MR. FELICIANO: Okay. So we're here, totally  
17 different, different case, of course. Do you think you can  
18 look at this case with -- and separate those two and be fair?

19 PROSPECTIVE JUROR NO. 048: I believe I can, yes.

20 MR. FELICIANO: And were you on a criminal jury  
21 before?

22 PROSPECTIVE JUROR NO. 048: Yes, I was.

23 MR. FELICIANO: Is there anything about that  
24 experience that makes it difficult for you to be here today?

25 PROSPECTIVE JUROR NO. 048: No.

1 MR. FELICIANO: All right. Thank you, sir.

2 PROSPECTIVE JUROR NO. 049: 049, Iverson.

3 MR. FELICIANO: And you are a teacher?

4 PROSPECTIVE JUROR NO. 049: Yes.

5 MR. FELICIANO: In junior high?

6 PROSPECTIVE JUROR NO. 049: Yes.

7 MR. FELICIANO: And you have an 11-year-old daughter?

8 PROSPECTIVE JUROR NO. 049: Yes.

9 MR. FELICIANO: Considering you have -- you deal with  
10 children all the time and that you have a young daughter, what  
11 do you think about the charges in this case?

12 PROSPECTIVE JUROR NO. 049: Obviously it's not easy.  
13 I mean, I guess in my mind I've thought about it as the trial  
14 kind of progresses and things are said. It would be very hard  
15 for me to not kind of picture my daughter in that same  
16 situation or --

17 You know, the majority of my students are Hispanic  
18 and so, you know, you kind of just want to put a face to a  
19 name or a face to a story, you know, like when you read a  
20 book. And that kind of races through my mind like, oh, what  
21 if this student of mine was in the position, those kind of  
22 things.

23 MR. FELICIANO: Do you think --

24 PROSPECTIVE JUROR NO. 049: That's part of it that  
25 would -- just the relate -- how you would relate it to

1 personal experiences.

2 MR. FELICIANO: Do you think you could be fair  
3 though?

4 PROSPECTIVE JUROR NO. 049: I'm not sure. I mean,  
5 obviously you're thinking of your daughter and, you know,  
6 students that you adore and that, and obviously it kind of  
7 gets you going a little bit and probably would bring out some  
8 things. I mean, I understand it's our job to be fair and  
9 things of that nature here, so I kind of got those two things  
10 going on. I would try to be fair.

11 MR. FELICIANO: If you were sitting in that chair,  
12 and someone with your mindset was sitting on your jury, would  
13 you be scared?

14 PROSPECTIVE JUROR NO. 049: I don't know that I would  
15 be the ideal juror for him. I don't know that I'd want to  
16 trade places.

17 MR. FELICIANO: So you're not -- so you're not sure  
18 if you can be fair. Are you going to try?

19 PROSPECTIVE JUROR NO. 049: I -- like I said,  
20 obviously I think everyone's going to try. Like she said  
21 earlier, you don't want just people to try. I mean, I would  
22 do the best that I could. But I, you know, it's hard to  
23 regulate emotions and feelings and things like that. Those  
24 kind of take control sometimes.

25 MR. FELICIANO: What if the State doesn't prove their

1 case beyond a reasonable doubt?

2 PROSPECTIVE JUROR NO. 049: I believe we're  
3 instructed at the very end if the law's not, you know, says  
4 that if that's the case then we have to vote not guilty, and  
5 we would do what the judge instructs.

6 MR. FELICIANO: And do you have any problem with  
7 that?

8 PROSPECTIVE JUROR NO. 049: I -- that's our  
9 instructions. That's what we have to follow.

10 MR. FELICIANO: Thank you, sir.

11 The Court's indulgence for a minute.

12 THE COURT: Sure.

13 (Pause in proceedings)

14 MR. FELICIANO: Pass the panel for cause.

15 THE COURT: Ladies and gentlemen, here's what we're  
16 going to do. We've been going for about an hour and 20  
17 minutes now. Let's take a 10-minute break so that you guys  
18 can get some refreshments or go to the restroom or whatever  
19 you need to do.

20 During this break, all the admonitions that I gave  
21 you earlier apply, which are don't reach any conclusions about  
22 this case. Don't talk to anyone about this case. Don't  
23 investigate any facts relating to the case. Don't view any  
24 media, press or Internet reports about this case. Don't talk  
25 to anyone who may be involved in any way with this case.

1 Don't discuss the facts of this case with each other.

2 Remember to wear your badge at all times. And again,  
3 there's no snack or soda machine on this floor, but there is  
4 on one floor up, one floor down. Let's see you back here  
5 about five minutes after 3:00 o'clock.

6 (Prospective jurors recessed at 2:51 p.m.)

7 THE COURT: Randy.

8 All right. We're outside the presence of the jurors.  
9 Is there anything that either side wanted to put on the  
10 record? Are we ready to do the perempts then? Do we have the  
11 sheet ready? All right. Let's go off the record then for a  
12 couple seconds. I'm just going to -- hang on.

13 Randy, go ahead and tell Ms. Trotchie, Badge No. 42,  
14 that she's free to go, or tell her to go back to the third  
15 floor. I had to put her in the back, but I'm just going to  
16 let her go.

17 THE MARSHAL: Yeah, because she's got an attitude --

18 THE COURT: Well, I don't --

19 THE MARSHAL: -- when she was on her way out the  
20 door, because she had to sit in the back.

21 THE COURT: Yeah. All right. Well, tell her she's  
22 free to go. It's the other guy, Anderson I kind of want to  
23 keep.

24 MS. FLECK: Is the other -- oh, Anderson you're going  
25 to keep?



1 THE COURT: Well, just for a few more minutes, just  
2 because I think he's just copying what that other woman said  
3 to get off the jury.

4 Tell Number 42 she's free to go. Send her down to  
5 the third floor, all right?

6 THE MARSHAL: Yes, sir.

7 THE CLERK: Are you going to do this off the record?

8 THE COURT: Yeah. Unless they want it to be on the  
9 record.

10 (Court recessed at 2:53 p.m. until 3:06 p.m.)

11 (Outside the presence of the prospective jurors.)

12 THE COURT: Where are we right now?

13 MS. FLECK: We're still going back and forth on our  
14 peremptories.

15 THE COURT: I know, but how far have you gotten?

16 MS. FLECK: We're on Defense 6.

17 THE COURT: All right.

18 (Pause in proceedings)

19 THE COURT: How much longer are you guys going to be?

20 MR. FELICIANO: We're almost done. We'll be done --  
21 just one more.

22 THE COURT: The jurors have been out 20, almost 25  
23 minutes.

24 MS. FLECK: Well, the first witness I will need. The  
25 victim we don't need anybody.

1 (Pause in proceedings)

2 MR. FELICIANO: We're all done.

3 MS. FLECK: Was it Schmidt or [inaudible].

4 (Pause in proceeding.)

5 THE COURT: All right. Are we ready to -- let's go  
6 on the record, Sara.

7 THE COURT RECORDER: We are.

8 THE COURT: All right. Back on the record. State  
9 vs. Guillermo Renteria-Novoa. We are outside the presence of  
10 the jury.

11 The attorneys have just finished their peremptory  
12 challenges, and it looks like the State is challenging Juror  
13 No. 068, 022, 058, 030, 037, 064, 043, 044, and 055. And the  
14 defense is challenging Jurors No. 053, 013, 027, 029, 031,  
15 032, 059, 071, and 049, leaving us with 14 remaining jurors.

16 And it looks like Juror No. 13 will be Juror No. 042.  
17 Sara -- wait. This is not -- wait, wait. Forty-two is  
18 kicked. Forty-two shouldn't be on this list. Forty-two is  
19 kicked for cause.

20 MS. FLECK: Which one was 42?

21 UNKNOWN SPEAKER: That was my error then. I  
22 apologize. I did not replace her apparently.

23 THE COURT: She was replaced by Juror No. 71.

24 UNKNOWN SPEAKER: No. She was replaced with  
25 Juror 69, Armida Martinez.

1 THE COURT: Right.

2 (Inaudible discussion.)

3 UNKNOWN SPEAKER: My error. I apologize, Judge.

4 Well, they don't have her marked at all anyways. They don't  
5 have anything next to her name.

6 THE COURT: Well, I mean, the problem is if we put  
7 Martinez in there, maybe someone would have challenged her.

8 UNKNOWN SPEAKER: True.

9 THE COURT: All right. Well, there was an error in  
10 the list. The list contained the name of Juror No. 042,  
11 Ms. Trotchie, however she was excused for cause. The name  
12 that should have been in there is Armida Martinez, Juror No.  
13 069. What I don't know is if that changes anything for either  
14 party, either side wanted to or would have --

15 MS. FLECK: 069, we -- is she the Filipino?

16 THE COURT: Yeah.

17 MS. FLECK: We kicked her. Let me -- here. She  
18 would have been -- sorry.

19 THE COURT: Oh, because yours [unintelligible]. Hang  
20 on here.

21 MS. FLECK: Yeah. I did 26.

22 THE COURT: Yeah, except that you didn't. There's  
23 nine other -- one, two, three, four --

24 (Inaudible discussion.)

25 MS. FLECK: She was our sixth.

1 THE COURT: Let me see that.

2 MS. FLECK: I did her -- it was in the wrong line.

3 Ms. Martinez is -- I did it by the seating chart  
4 unfortunately.

5 THE COURT: So wait. Did you not intend to kick  
6 Karen Valerio then?

7 MS. FLECK: No. I kicked here. See, look.  
8 Ms. Valerio I have and Ms. Martinez, no.

9 UNKNOWN SPEAKER: Martinez was in Seat 26.

10 THE COURT: Right.

11 MS. FLECK: Right. And that's what I have on my  
12 seating chart, but I guess I missed the wrong line.

13 MR. FELICIANO: Can I come up?

14 THE COURT: Yeah. I'm going to need everybody to  
15 come up here for a second. All right. This is what happened.  
16 In this spot here we had the wrong name. Instead of  
17 Ms. Martinez it was Ms. Trotchie, who was the P and P intern  
18 that we excused for cause.

19 MR. FELICIANO: Okay.

20 THE COURT: So it should have been Martinez. And  
21 what Ms. Fleck is saying is on her seating chart her Challenge  
22 No. 6, Ms. Valerio actually should have been Martinez, and she  
23 would have left Valerio there. The question is: Does that  
24 change anything for you guys?

25 (Defense attorneys confer.)

1 MR. FELICIANO: Yeah. If she was there we would  
2 have -- that would have been one we would have.

3 MS. FLECK: If who was there?

4 MR. FELICIANO: Well --

5 MS. FLECK: If I hadn't kicked Ms. Valerio you would  
6 have?

7 MR. FELICIANO: Yes.

8 THE COURT: All right. I mean, there's a couple ways  
9 we can do this. We can start all over, or since Ms. Valerio  
10 was the State's presumably sixth challenge, we can cross out  
11 everybody sixth, seventh, eighth and ninth and start from  
12 there. Do you want to do that?

13 MS. FLECK: That's fine.

14 MR. FELICIANO: Yeah.

15 THE COURT: All right. So cross out everybody sixth,  
16 seventh, eighth and ninth.

17 UNKNOWN SPEAKER: [Inaudible.]

18 MS. FLECK: No. It's actually mine, because I  
19 missed -- put it on the wrong line.

20 THE COURT: All right. I've just crudely Xed them  
21 off, but let's start with -- so let's see. So we're on  
22 Challenge No. 6 for -- who started this, you guys or you guys?

23 MR. FELICIANO: They started.

24 THE COURT: Okay. So your Challenge No. 6.

25 (Inaudible discussion.)

1 MS. FLECK: All right. We're ready.

2 MR. FELICIANO: All done.

3 MS. FLECK: Thank you. Sorry about that.

4 THE COURT: All right. So let me start again. Are  
5 we on the record, Sara?

6 THE COURT RECORDER: Yes.

7 THE COURT: So the State has challenged jurors  
8 numbered 68, 22, 58, 30, 37, 64, 69, 44, and 55, while the  
9 defense has challenged jurors numbered 53, 13, 27, 29, 32, 59,  
10 43, 71, and 49, which leaves us with 14. And it looks like  
11 Jurors No. 13 would be Mr. Gebrechristos, Juror No. 39, so he  
12 would be our first alternate. Our second alternate would be  
13 Juror No. 14, who is Badge No. 48, Garry Garwood.

14 Does that match with what everybody else has? So the  
15 panel now consists of Badge Numbers 001, 002, 005, 016, 017,  
16 018, 020, 021, 062, 028, 031, 035, 039, and 048, with 039 and  
17 048 being two alternates. Does that match with what everybody  
18 else has?

19 MS. FELICIANO: It matches what the defense has.

20 THE COURT: All right. Let's talk about scheduling  
21 very quickly, because it's now 3:35. We're going to need --  
22 it's going to probably take us ten minutes to call everybody  
23 in here and then announce the ones who are leaving, and then  
24 swear the jury in. So we're probably looking at a quarter to  
25 4:00.

1           How long were you guys planning on -- and then we  
2 have to -- I have pretrial instructions, which usually take  
3 about 10 minutes for me to read. We have 37 counts in the  
4 Information, so that will take probably 10, maybe 15 minutes  
5 for the clerk to read, which takes us close to 4:00. What do  
6 you guys want to do about openings? Do you want to just wait  
7 until tomorrow morning at that stage, or what?

8           MS. FLECK: If we do it --

9           THE COURT: Because if we don't really start until  
10 close to 4:00, and I don't know how long you guys were  
11 planning your openings to be, but that's --

12          MS. FLECK: We can just do it first thing if we  
13 instruct and do everything tonight, that's great. But Judge,  
14 first, I don't mean to be a pain in the -- a pain in the you  
15 know what, but I think I've -- can we just go through who --  
16 because I have that the jury should end at Mr. Gebrechristos,  
17 and then we have our alternates.

18          MS. FELICIANO: Can we do by badge number and not  
19 names? Sorry. Because I have their numbers.

20          MS. FLECK: Well, okay. So --

21          MS. FELICIANO: The jury should end with number what?

22          THE COURT: This is the jury that I have. Okay.  
23 Badge Numbers 001, 002, 005, 016, 017, 018, 020, 021, 062,  
24 028, 031, 035, and then the two alternates being 039 and 048.

25          MS. FELICIANO: And that's what the defense has as

1 well.

2 MS. FLECK: Thirty-one, no. They got rid of 31.

3 MS. FELICIANO: No. When we -- when we did our new  
4 after six through nine --

5 MS. FLECK: Oh, okay. Sorry. You kept him.

6 THE COURT: Right. There's no challenge here on the  
7 sheet that I have.

8 MS. FLECK: Got it. Okay. Then no problem. I  
9 just --

10 THE COURT: Are we all on the same page now?

11 MS. FLECK: Yes, we are on the same page. I  
12 apologize.

13 THE COURT: All right. So in terms of scheduling  
14 then, it sounds like we're not going to get close to starting  
15 openings until close to 4:00. Do you guys want to -- so  
16 [unintelligible] we just start tomorrow at 10:00 o'clock then?

17 MS. FELICIANO: Fine with us.

18 THE COURT: So here's the question. Do we even want  
19 to read them the Information today, or read them all tomorrow?

20 MS. FLECK: I think we should do it today. I really  
21 think that that would save so much --

22 THE COURT: It doesn't matter to me either way. I'm  
23 just -- I don't know if you guys wanted to do it all together  
24 as a block, if it makes it easier for you to make your  
25 openings or not. I don't care either way. Whatever you guys



1 want.

2 MS. FLECK: I mean, the Information is so it's like  
3 it's all the same thing and it's just a -- it's not like they  
4 need to remember by -- for opening what was said in the  
5 Information. It's basically like unfortunately we can't just,  
6 you know, put it into the record otherwise.

7 THE COURT: Do you guys -- on behalf of the  
8 defendant, do you guys have an opinion either way?

9 MR. FELICIANO: No preference.

10 THE COURT: Well, then we'll read it today and -- I  
11 just wasn't sure if you guys, you know, in your openings were  
12 going to say like, oh, the judge just read you count whatever,  
13 you know, that kind of thing, and then you have the day break.  
14 If you don't mind, then we'll just read this today and we'll  
15 do the openings tomorrow then. All right.

16 MS. FLECK: Then we can really just start --

17 THE COURT: Yeah. Just start, do openings and then  
18 roll into the witnesses. Oh, you have one. Okay. And then  
19 tomorrow night's the night that you can't stay late, but  
20 Thursday night we can, right?

21 MS. FELICIANO: Right.

22 MR. FELICIANO: Yes.

23 THE COURT: All right. And I'm trying to -- all  
24 right. So let's do that then. And then let's bring them  
25 back in, Randy, and we'll let everybody but 14 of them go and

1 we'll get started.

2 MR. FELICIANO: Before we do that, can -- we just  
3 have some Batson issues we want to address.

4 UNKNOWN SPEAKER: Will you stop him, please.

5 THE COURT: Hang on.

6 MS. FELICIANO: Are we on the record?

7 THE COURT: Yeah, we're on the record.

8 All right. Hang on a second. Apparently there was  
9 something else they want to put on the record.

10 All right. What's going on?

11 MR. FELICIANO: Judge, it looks like Badge No. 68  
12 appears to be Latino, Badge No. 69 is Filipino, Badge 55 is  
13 Latino, and Badge 64 is black.

14 THE COURT: Wait. Read them again. Sixty-eight.

15 MR. FELICIANO: 68, 69, 55 and 64.

16 MS. FLECK: Sixty-eight is --

17 THE COURT: 55 and 64. Okay. Sixty-four --

18 MS. FLECK: Sixty-nine was the Filipino lady with the  
19 interpreter.

20 THE COURT: Right. All right. So what did you want  
21 to do?

22 MR. FELICIANO: Judge, we just want to make our  
23 record that based on the excusal of these four witnesses, this  
24 does appear to be a pattern of racial bias in this case, and  
25 we would ask for race neutral reasons as to why these

1 prospective jurors were dismissed.

2 THE COURT: All right. Ms. Fleck, your response, or  
3 Mr. Graham, whoever wants to respond.

4 MS. FLECK: Just hold on one second, please.

5 Okay. Well, I will start with the fact that we had a  
6 obviously diverse panel. I think with even just in the box  
7 from the beginning we had five African-American -- once we  
8 settled it we had five African-Americans, a number of  
9 Hispanics, a number of Asians, and I think even in the  
10 minority white. So both sides really had no option but to  
11 kick people of -- that were minority.

12 In terms of Number 68, I made numerous challenges for  
13 cause on Number 68, being Mr. Elias Aguilar. He is the person  
14 who even with the use of the interpreter who we brought in  
15 yesterday for his assistance and then had him today, he was  
16 not able to answer any questions in an appropriate way. He  
17 was non-responsive.

18 I don't think he was trying to be, but I really don't  
19 think that he understood or could grasp what was going on. He  
20 was confused. He was nervous. He was uncomfortable, which he  
21 said many times. He appeared confused and he appeared  
22 uncomfortable. So, you know, I tried to get him kicked as  
23 many times as I could for cause and I didn't feel comfortable  
24 with his uncomfortableness.

25 Next we have 69. She is Filipino. Again, her answer

1 to the -- she said at one point in time, If the State can't  
2 decide their case, how can I. You went on to ask her, well,  
3 you know it's the State's burden, yes, and could you find him  
4 not guilty, yes.

5 But her body language to me and when she said that,  
6 if the State can't decide their case how can I, it told me  
7 that she was not comfortable with the process and that she was  
8 uncomfortable with the idea of having to determine guilt on a  
9 person. And I don't know if it was the language barrier or if  
10 that's how she felt, but I need a juror who is able to  
11 deliberate and is able to weigh the evidence and is able to  
12 then go make a determination.

13 So that's why we got rid of Ms. Martinez, who is --  
14 while she has a Hispanic last name, considering we had to get  
15 an interpreter for her in her native language, we all know  
16 she's from the Philippines.

17 Number 55, Quince, I'm not sure what indicator there  
18 is that Ms. Quince was a minority.

19 THE COURT: Yeah. I don't actually show her to be a  
20 minority. What group do you think she's part of?

21 MR. FELICIANO: Judge, we perceived her to be a  
22 Latina female, but we could be incorrect. But that's what it  
23 appeared to us.

24 MS. FLECK: I mean, just because she has dark hair  
25 didn't mean that she's Latina.

1 MR. FELICIANO: I didn't say that.

2 MS. FLECK: Well, no, I know, but I'm just saying how  
3 she appeared, there's nothing about her that appears -- her  
4 name doesn't appear to be of, you know, Hispanic descent. She  
5 herself, I thought she spoke with more of almost a Southern  
6 accent than any other kind of accent.

7 THE COURT: Right. And there was some indication  
8 when I questioned her that she had spent some time in  
9 Virginia, which may explain the Southern accent.

10 MS. FLECK: Right. I --

11 THE COURT: I'm not -- I mean, honestly, I'm not sure  
12 that she is a minority. I was -- you know, as is my usual  
13 practice, in anticipation of any motions, I actually circle  
14 the people who -- in the pool who appear to me to be  
15 minorities, and I didn't have her circled.

16 As I sit here right now, I can't tell you I honestly  
17 remember what her face looks like, but I didn't have her  
18 circled. But anyway, go ahead. I'm interrupting.

19 MS. FLECK: Well, and to be honest, the only reason  
20 that we kicked her is because she was further back in the line  
21 and wasn't going to be on the jury either way. Like we  
22 wouldn't have gotten her on even as an alternate. So by the  
23 time we got to her, it's not like I had a real issue with her.  
24 It was just we had already pretty much gotten our jury and so  
25 she fell off of the panel.

1           And then finally, with Ms. Temple, again, Ms. Temple  
2 was more of a strategic decision based upon who was already on  
3 the panel. Additionally, the things that made me concerned  
4 about her was that when you first asked if she knew anyone who  
5 had been sexually abused, if she had any experience with that,  
6 she said no. And then I didn't get an opportunity to flesh  
7 any of that out with her.

8           Then when Mr. Feliciano got up and talked with her,  
9 then all of the sudden she had numerous experiences with  
10 sexual assault victims in her past, and some of them, you  
11 know, with the five-year-old and then with the 16-year-old who  
12 was lying. I -- having not had an opportunity to ask her,  
13 since she wasn't forthright the first time around, I didn't  
14 feel comfortable having her on my jury because I don't  
15 understand why she didn't tell the first time.

16           Maybe she didn't understand it. But either way, I  
17 didn't get a chance to feel her out on that very important  
18 issue. So that was why we chose Ms. Temple as one of our  
19 peremptories.

20           THE COURT: All right. Mr. Feliciano, your response  
21 to that.

22           MR. FELICIANO: Judge, I would ask to Ms.--  
23 Number 68 --

24           THE COURT: Hang on. Sixty-eight is who?  
25 Sixty-eight is, okay, Mr. Aguilar. Right. Okay.

1 MR. FELICIANO: What we have here is a pretextual  
2 argument. I don't think there's anybody in the box that isn't  
3 probably nervous and uncomfortable. Based on that, that is  
4 not sufficient for a race neutral reason to kick him. He was  
5 using an interpreter and he was able to clarify that he would  
6 follow the instructions and that he did understand.

7 As to 69, the same issue, another pretextual reason,  
8 the basis simply because she was using the interpreter. She  
9 did say that she could understand after we fleshed it out a  
10 little bit, that she could be fair, she could find for each --  
11 she could find the defendant guilty and she could find him not  
12 guilty.

13 As to 55, I don't think there was any argument on 55.

14 THE COURT: Well, that's the one that we're not even  
15 sure is an actual minority.

16 MR. FELICIANO: Just because she's further back in  
17 the line, that doesn't mean that it doesn't apply. The entire  
18 panel has the same protection. So just because she was back  
19 there and she wouldn't have -- wasn't going to make it on the  
20 jury by Mrs. Fleck's estimation, that's not a sufficient  
21 reason to kick her for -- as a perempt.

22 MS. FLECK: Judge, if whenever -- if I could just say  
23 one more thing.

24 THE COURT: All right. Let's go one at a time.  
25 Mr. Feliciano.

1           MR. FELICIANO: And as to 64, strategically again,  
2 this is a pretextual reason strategically. There were other  
3 people that had the same type of issues as far as abuse and  
4 they were not removed from the panel. This is --

5           Oh, and there were other people that after initially  
6 they didn't disclose any type of abuse or any type of issues,  
7 but later, after we took the panel over, we did have several  
8 people that did come forth with other issues. So again,  
9 that's pretextual.

10          THE COURT: All right. Ms. Fleck, you wanted to  
11 respond.

12          MS. FLECK: Yes. Thank you. Actually, in terms --  
13 I'll start with Ms. Temple. Actually that's not true.  
14 Ms. Temple didn't disclose and then we got rid of her.  
15 Mr. Winings, same thing. He didn't disclose about his -- when  
16 you first asked if he knew anyone that had been arrested, and  
17 then he came back and said, Oh, my gosh, I forgot that my son  
18 spent 11 years in prison, we got rid of him.

19           He was our very first one because I'm sorry, you  
20 don't forget something like that. Just like in my opinion  
21 Ms. Temple doesn't forget that she has two experiences that  
22 she was then able to go into detail about regarding sexual  
23 abuse. So we did kick Mr. Winings because of the exact same  
24 reason.

25           So just then to go through, the defense has kicked,



1 as I see, three Hispanics -- two Hispanics and a black.

2 THE COURT: Hang on. Here are the numbers that I  
3 had. In the original group, not including Ms. Quince, who as  
4 I indicated I did not have circled, there were 13 minorities.  
5 Mr. Richard, Badge No. 2, is an African-American. Mr.  
6 Cordero, Badge No. 16, is from Guam, so he's of Asian descent.  
7 Ms. Johnson, Badge No. 20, was African-American.

8 Mr. Carrera, Badge No. 28, was -- indicated he was  
9 born and raised in Mexico. Ms. Moreno-Zepeda, Badge No. 35,  
10 appeared to be Hispanic. Mr. Gebrechristos, Number 39,  
11 indicated he was from Eritrea. Ms. Valerio, Badge No. 43, I  
12 forgot what country she said she was from, but she's a Spanish  
13 instructor at UNLV.

14 MS. FLECK: But I believe the defense kicked her.

15 THE COURT: Right. Now I'm just going through the  
16 numbers of people in the box.

17 MS. FLECK: Okay. Sorry. Sorry.

18 THE COURT: Mr. Correa, Badge No. 53, was Hispanic.  
19 Ms. Crockett, Badge No. 59, was African-American. Ms. Temple,  
20 Badge No. 64, was African-American. Mr. Aguilar, Badge No.  
21 68, was Spanish, a Spanish-speaker with the assistance of the  
22 interpreter. Ms. Martinez, Badge No. 69, was from the  
23 Philippines and she had the assistance of a Tagalog  
24 interpreter. And Badge No. 71, Ms. Rivera, was Hispanic.

25 If you add Ms. Quince, who the defense apparently

1 believes is Hispanic, even though I didn't have her circled,  
2 that would make 14 of the people in the box members of an  
3 ethnic minority group. Mathematically, with the number of  
4 people in the box and the number of challenges, if everybody  
5 exercised their perempts, somebody has to kick a minority.  
6 That's just the way it works in America.

7 I also note it appears that the defense has  
8 challenged or excused Number 53, Mr. Correa, Number 59,  
9 Ms. Crockett, Number 43, Ms. Valerio, and Number 71,  
10 Ms. Rivera, all of whom are members of ethnic minority groups.  
11 The defense is asserting that the State has also excused a  
12 number of minorities, specifically Badge No. 68, Badge No. 64,  
13 Badge No. 69, and I believe that's it, correct.

14 What's interesting is of the 13, 14 if you include  
15 Ms. Quince, members of the original panel who were in the box,  
16 both parties ended up kicking seven of them between the two --  
17 between the defense -- hang on. One --

18 MS. FLECK: Seven between -- they kicked four and we  
19 kicked three.

20 THE COURT: Right. Exactly. So between the two,  
21 seven of the members of the various ethnic minority groups  
22 were excused between the two parties, with the State excusing  
23 four and the defense excusing three. And again, I'm still not  
24 sure. I wish I could see Ms. Quince right now. I didn't have  
25 her circled. I'm not entirely sure she is a member of a

1 minority group. But in any event --

2 All right. The issue is this. The State has  
3 raised -- I mean, the defense has raised a Batson challenge,  
4 so the issue is whether or not the State is showing a pattern  
5 of excusing jurors of particular minority groups in violation  
6 of the defendant's constitutional rights. You know what.  
7 Just so the record is complete, let's -- let me also add that  
8 it looks like the --

9 If we leave the panel the way it is, the minority --  
10 the jurors who would remain in the final group of 14 who are  
11 members of a minority group are Mr. Richard, Badge No. 2, who  
12 appears to be African-American, Mr. Cordero, Badge No. 16, who  
13 is from Guam, Ms. Johnson, Badge No. 20, who is  
14 African-American, Mr. Carrera, Badge No. 28, who indicated he  
15 grew up -- he was born and raised in Mexico, Ms.  
16 Moreno-Zepeda, Badge No. 35, who is of Latina origin, and Mr.  
17 Gebrechristos, who is from Eritrea, who would be our first  
18 alternate.

19 Those are the minority jurors who would remain in the  
20 final group of 14 if the jury panel stays the way it is.  
21 Which gives us one, two, three, four, five of the final 14; is  
22 that correct? One, two, three, four, six. Six of the final  
23 14, as things stand, would be members of various ethnic  
24 minority groups.

25 All right. So the issue is whether or not the State,

1 through their challenges, has shown a pattern of  
2 discrimination. I'll start with Mr. Aguilar. I will note  
3 that Mr. Aguilar, as everybody knows by now, was here with the  
4 assistance of the Spanish interpreter and the State did make  
5 numerous challenges for cause.

6 Mr. Aguilar did give some answers which were a little  
7 concerning for me. He indicated that he would be so  
8 nervous -- the answer that concerned me the most frankly, was  
9 that he doesn't remember anything. And so whether or not he  
10 has a bias, whether or not he can be fair and impartial, if  
11 the juror can't remember anything, especially in a case where  
12 there are 37 counts, that was a little bit of a concern to me.

13 And based on that, I'll say for the record, it was a  
14 little bit of a close call whether I would even have excused  
15 him for cause. I ended up not doing so because he indicated  
16 that perhaps with the assistance of a notepad and pen he --  
17 that he would be able to pay attention to everything.

18 But again, my own personal concern was in a case  
19 with 37 counts, a guy with a memory problem is -- there's a  
20 question about whether or not he actually can do the job even  
21 if he says he can. And so on that one I find that the State's  
22 reason is not pretextual because, as I indicated, I was  
23 actually somewhat concerned about Mr. Aguilar.

24 And my concern, not that it needs to be said, but so  
25 the record is complete, obviously it has nothing to do with

1 his race or his national origin. It was, you know -- and so I  
2 find that the State's position as to Mr. Aguilar is not  
3 pretextual and their reason for excusing him was race neutral.

4 Ms. Martinez -- I'm sorry, Ms. Fleck. I forgot what  
5 your reason for her was.

6 MS. FLECK: Was she the --

7 THE COURT: She's the --

8 MS. FLECK: -- Filipino?

9 THE COURT: -- Tagalog interpreter person.

10 MS. FLECK: Well, her answer was -- or one of her  
11 answers was if the State can't -- look at exactly what she  
12 said. What was her number again, Your Honor?

13 THE COURT: Sixty-nine.

14 MS. FLECK: If the State can't decide their case, how  
15 can I. And --

16 THE COURT: Right. I do remember her saying that.

17 MS. FLECK: And in fact, I asked that we flesh it  
18 out, and then your questions were: Do you realize it's the  
19 State's burden, yes; do you -- could you find the defendant  
20 not guilty if they don't reach their burden, yes. But to me,  
21 her body language in that answer, I got the sense that she  
22 felt like this was too much of a responsibility and if we  
23 don't have --

24 I don't know how it works in her country. Maybe she  
25 thinks that if there's enough evidence you don't go to a

1 trial. I don't know. But that answer, to me, if the State  
2 can't -- if the State basically doesn't know, how is she  
3 supposed to know, told me that she's either confused by the  
4 system, confused by the way the entire criminal justice system  
5 works, what her duty would be, and then if she would feel  
6 comfortable deliberating, and then if she will be a person who  
7 would ultimately hang the jury.

8 THE COURT: Right. And I -- for the record, I didn't  
9 say this at the time. But I was a little bit concerned by  
10 that as well, because her answer -- and again, I will grant  
11 that who knows if there's an interpretation problem.

12 MS. FLECK: Right.

13 THE COURT: It always happens when you interpret  
14 twice. We're interpreting what I say and she interprets back,  
15 so. And unfortunately, we'll never know. But in any event, I  
16 was a little bit concerned because her statement, which I did  
17 attempt to clear up myself, before I cleared it up she had  
18 said if the State doesn't know how am I supposed to know,  
19 which sort of suggests the State is supposed to make the  
20 decision for her.

21 I'm not sure if that's what she meant. I'm not sure  
22 if that was an interpretation question. I did notice that.  
23 And that's one of the reasons why after our conversation at  
24 the bench I decided to clear it up, because it sort of  
25 suggests that she -- my concern when someone says that is they

1 think that they're just going to go along with what the State  
2 says because it's the State's decision in some way.

3           Again, I don't know if that's a cultural thing. I  
4 don't know if that's how things work in the Philippines. But  
5 when someone says, well, if the State doesn't know how am I  
6 supposed to know, that's -- regardless of her race, it's kind  
7 of a dangerous statement for me because it sort of suggests,  
8 well, if the State says it's true, then it must be true.

9           But anyway, I just note that for the record as one of  
10 my concerns with Ms. Martinez. So I can understand why she  
11 was challenged, because -- because that answer caused me some  
12 concern. So I find that the State's reasons for excusing  
13 Ms. Martinez are race neutral.

14           Who else? I'm sorry. There's too many numbers  
15 floating around here.

16           MS. FELICIANO: Fifty-five.

17           MR. FELICIANO: Fifty-five.

18           THE COURT: Oh. Fifty-five is Ms. Quince. I'm not  
19 even sure -- I mean, I can't say she's not, but I didn't have  
20 her circled. I'm not even sure she is a minority.

21           MS. FELICIANO: For the record then, the only thing  
22 that we'd ask is that if you're going to say that you're not  
23 sure that she is a minority, because for the record, the  
24 prospective panel is not here in the room right now. They are  
25 out in the hallway. We have to ask that either, you know,

1 she's brought in and we have some sort of a hearing on it.

2 But we have to have that clarified in the record. We  
3 can't just say with them sitting out in the hallway that  
4 everybody's not sure, for us, to cover us on the record.

5 MS. FLECK: Okay. But here's the thing. How on  
6 earth am I supposed to know that? I mean, no one can tell,  
7 not by her name or by the way she looks.

8 THE COURT: Right. I mean, I guess that's your  
9 point, Ms. Fleck, is that if we have to have a hearing to  
10 determine whether she is a minority, that means that Ms. Fleck  
11 knew that she's a minority, I guess, is her response.

12 MS. FELICIANO: And what we're saying is that our  
13 recollection from viewing her is that she was. She appeared  
14 to us to be a minority. That's why we had that down as a  
15 Batson challenge. That's what the issue is. We're just  
16 saying that it appeared to us that she was a minority. So  
17 it's not that that --

18 THE COURT: Well, I mean, here's my legal question.  
19 I mean, if Ms. Fleck is saying on the record as an officer of  
20 the court that at the time she made the challenge she didn't  
21 know that she was a minority, I mean, doesn't that play some  
22 part in whether her reason for kicking Ms. Quince is race  
23 neutral or not?

24 I mean, unless you're saying that Ms. Fleck is either  
25 blind or lying to the Court. I mean, that must play some role



1 in the analysis, right or wrong?

2 MS. FELICIANO: She submitted her reasons for  
3 striking her. We said that they were merely pretextual and we  
4 made the record. If the Court wants to find that her  
5 representation now as an officer of the court is a race  
6 neutral reason, then that's the Court's decision. We made our  
7 record.

8 MS. FLECK: Well, actually, they have to -- I mean,  
9 under Batson the defense has the burden first to show that, to  
10 make a prima facie showing that it's even a, you know --

11 THE COURT: I guess, here's my question. All right.  
12 As we all sit here right now, I honestly don't know if she's a  
13 member of a minority group or not. But to the extent that  
14 Ms. Fleck is saying that she also does not even know if she's  
15 a member of a minority group, then obviously any reason she  
16 gives for excusing Ms. Quince is going to be race neutral if  
17 she's not even aware of what her race is, is what I'm saying.

18 Is that -- is that -- so I guess independently of  
19 whether or not she is actually, you know, a member of a  
20 minority group, if Ms. Fleck is honestly saying for the record  
21 she didn't know, I mean, isn't that a factor to take into  
22 consideration whether or not her reasons are race neutral, is  
23 what I'm asking. Do you agree or disagree with my analysis?

24 And what I'm -- I guess where I'm going with this is  
25 do we, you know, unless you're saying that there's a question

1 about Ms. Fleck's judgment or honesty, you know, we can bring  
2 her in here and ask if she is a member of a minority group.  
3 But to the extent that Ms. Fleck didn't know that, does it  
4 matter whether she is or is not, is my question.

5 I mean, do you have a response to that? I'm just,  
6 you know, throwing that out there as a thought and as I  
7 analyze it in my head.

8 MR. FELICIANO: Well, I mean, I don't know if  
9 everything we go by is by Ms. Fleck's perception. I guess  
10 that's why we have the purpose of having them come in and ask  
11 them, because we -- Ms. Fleck isn't the one that makes every  
12 single decision. So she could be -- and she could be  
13 incorrect in her assessment of this particular person. I  
14 guess that's maybe why they have people come in and ask them.

15 THE COURT: All right. Randy, let's bring Juror  
16 No. 55, Ms. Quince, in for a second. All right.

17 (Prospective Juror No. 55 enters the courtroom.)

18 THE COURT: Hi, Ms. Quince. Can you step forward so  
19 you're kind of near a microphone, and the microphones are on  
20 the table here. All right. First of all, I don't want you to  
21 be embarrassed. We're not singling you out for anything. You  
22 didn't do anything wrong. We just had a couple of follow-up  
23 questions.

24 Mr. Feliciano and Ms. Fleck, do you guys want to ask  
25 her some questions? Let's start with -- I don't care who goes

1 first, or if you guys even have any questions or what.

2 MR. FELICIANO: It's not our burden at this point,  
3 Judge. We made the challenge.

4 MS. FLECK: It is actually. It's their burden to  
5 prove that. They have to make a prima facie showing of racial  
6 discrimination.

7 THE COURT: Right. You have to make a prima facie  
8 showing at least that -- so I mean, if you're just not going  
9 to ask anything, I'm going to excuse her.

10 MR. FELICIANO: The Court's indulgence.

11 (Pause in proceedings)

12 MR. FELICIANO: Sorry, ma'am. I just have a couple  
13 questions for you.

14 PROSPECTIVE JUROR NO. 055: Oh, okay.

15 MR. FELICIANO: Can I ask you what ethnicity you are?

16 THE COURT: Can you hear her, Sara? I just want to  
17 make sure.

18 PROSPECTIVE JUROR NO. 055: White.

19 MR. FELICIANO: You're white?

20 PROSPECTIVE JUROR NO. 055: Yes. My parents are  
21 European descent, so father's side is Italian.  
22 [Unintelligible] why I'm dark.

23 MR. FELICIANO: Okay. Thank you.

24 THE COURT: Ms. Fleck, any questions?

25 MS. FLECK: Nothing, thank you.

1 THE COURT: All right. I appreciate it, Ms. Quince.  
2 Please don't be embarrassed. We're just trying to, you know,  
3 kind of work through some stuff and people had some questions.  
4 All right. I appreciate it.

5 PROSPECTIVE JUROR NO. 055: Also, my last name is  
6 spelled wrong. I don't know if you guys wanted to correct  
7 that.

8 THE COURT: How is it spelled?

9 PROSPECTIVE JUROR NO. 055: It's not a C. It's a T.

10 THE COURT: It's Q-u-i-n-t-e?

11 PROSPECTIVE JUROR NO. 055: Mm-hmm.

12 THE COURT: Oh, Quint [phonetic]. Is it Quint or  
13 Quintey [phonetic]?

14 PROSPECTIVE JUROR NO. 055: Quintey.

15 THE COURT: All right. We've been saying it wrong  
16 the whole time. I apologize.

17 PROSPECTIVE JUROR NO. 055: No, it's fine. It's  
18 spelled wrong.

19 THE COURT: Okay. Please join your fellow jurors in  
20 the hallway, and I apologize. Don't read -- don't discuss  
21 what we discussed in here or don't -- they're going to be  
22 curious why you came in here. Please don't discuss it until  
23 after the case is over and you've been excused. All right.  
24 Thank you very much.

25 (Prospective Juror No. 55 exits the courtroom.)

1 THE COURT: All right. Ms. Quinte is now outside of  
2 the courtroom, so we're outside the presence of the jury.

3 Well, it appears, based on Ms. Quinte's response,  
4 that she's not actually a member of any minority group, and so  
5 the Batson challenge, I find that the defense hasn't even made  
6 a prima facie showing that there is a Batson challenge to be  
7 made here.

8 All right. Who's the next one? The numbers are --

9 MS. FELICIANO: Sixty-four.

10 THE COURT: Sixty-four is Ms. Temple. All right.  
11 Ms. Fleck, remind me again, what was your reason for striking  
12 Ms. Temple?

13 MS. FLECK: Well, I mean, to be honest, it's a little  
14 bit what you said, that we get down to the point where the  
15 majority of the people that I have to choose from are of some  
16 sort of ethnic minority. With Ms. Temple, the thing that I  
17 didn't like is that when I -- when you asked if she knew  
18 anyone who was a victim of sexual abuse and if she had any  
19 experience with that, she said no.

20 Then I got up and I did my voir dire, and it did not  
21 come up because she did not disclose that. Then, when the  
22 defense is talking to her, she all the sudden has a lot of  
23 experience with victims of sexual abuse, both a five-year-old  
24 and a 16-year-old who went on to lie about it. I was not able  
25 to flesh out the circumstances surrounding the 16-year-old who

1    lied and what her opinion on that was and, you know, which  
2    side of the fence she laid on that -- on that issue.

3               So I didn't have an opportunity to even speak to her  
4    about the crux of our case, because she wasn't forthcoming  
5    about it initially.

6               THE COURT:  You know what.  One other way to look at  
7    the numbers, I just -- just so the record is complete, the  
8    State made nine peremptory challenges.  Of the nine challenges  
9    they made, it looks like three were to members of ethnic  
10   minorities and six were to Caucasian jurors, for want of a  
11   better way to describe it.

12              It looks like the State challenged -- the minorities  
13   that the State challenged were Mr. Aguilar, Number 68,  
14   Ms. Temple, Number 64, and Ms. Martinez, Number 69.

15              MS. FLECK:  And I would note that out of the three  
16   that we excused, only one is of the same ethnic background as  
17   the defendant, where the defense actually kicked, I believe,  
18   three that are of the same ethnic background as their own  
19   client.

20              THE COURT:  Then Ms. Temple, looks like, was the  
21   State's eighth peremptory challenge, with the ninth being  
22   Ms. Quinte.

23              All right.  Mr. Feliciano, remind me again of your  
24   response, why you think that the reason for challenging  
25   Ms. Temple was pretextual.  And I apologize for making you

1 guys repeat it. There's just, you know, between working  
2 through all the numbers and everything it's hard to keep  
3 track.

4 MR. FELICIANO: Judge, first of all, the State didn't  
5 voir dire her on that issue. They didn't bring it up. And  
6 throughout this whole jury selection process we've had people  
7 that have changed. They've heard the general voir dire from  
8 Your Honor, and after speaking to us have disclosed further,  
9 further things that have happened. It's not uncommon.

10 It's been happening since we started that people have  
11 added new -- new things in voir dire. Based on that --

12 THE COURT: Well, let me ask you this along those  
13 lines. One of the ways to look at whether or not the State's  
14 reason is pretextual is, is there another juror who is white  
15 or Caucasian who gave the same response that the State left on  
16 the panel? Can you point to one?

17 Because if they kicked everybody who said that,  
18 whether they're white or not, that sort of undercuts the  
19 argument that their argument is pretextual.

20 MR. FELICIANO: Judge, I can't do that without  
21 looking at a transcript of the voir dire.

22 THE COURT: Well, I mean, that would -- I mean,  
23 there's --

24 MR. FELICIANO: And my notes are limited, so.

25 THE COURT: Right. I mean, that's kind of my

1 handicap too as I sit here and listen to your arguments. I  
2 understand the argument you're making, which other jurors said  
3 the same thing. But the question is, were they kicked?

4 And I just honestly at this stage, I remember hearing  
5 other jurors give some responses, but if the State kicked all  
6 of them, then that hurts your argument. But as I sit here  
7 right now, I just -- I can't remember. And if you can, you  
8 know, and you're saying you can't remember and I don't --

9 MS. FLECK: Is it what she said or what she didn't  
10 say? It's what she didn't say.

11 THE COURT: Well, what she didn't say and then  
12 subsequently filled in apparently is the way I'm  
13 characterizing your response. I think other jurors did the  
14 same thing, but if the State kicked them all, then that, you  
15 know, suggests that the response is not pretextual. But  
16 unfortunately, unless you have the information, we're kind of  
17 lacking information.

18 MS. FLECK: I did kick Mr. Winings, because  
19 Mr. Winings said that he didn't have anyone in the criminal  
20 justice system and/or he didn't know anyone or was close to  
21 anyone that was accused. And then all of the sudden his  
22 illegitimate son was a sexual -- sex offender.

23 THE COURT: Who spent 11 years in prison.

24 MS. FLECK: No. Then his other son spent 11 years in  
25 prison for like armed robbery, but he forgot. So I kicked him



1 and he was our first kick.

2 THE COURT: All right. Well, I mean, given that --  
3 unless you have something to add, Mr. Feliciano. At least the  
4 State has given a reason which they've also applied to a white  
5 juror.

6 And so since they have taken a criteria, even if the  
7 criteria may not be something that you agree with, if they  
8 apply the same criteria to other jurors who are the different  
9 racial groups, which in this case it at least appears that  
10 they have with respect to Mr. Winings, Juror No. 22, then  
11 based on that I find that the State's reason is race neutral  
12 and not pretextual.

13 Does that cover everybody or not?

14 MS. FLECK: That's it.

15 MR. FELICIANO: Yep, that's it.

16 THE COURT: Thanks. All right. Well, you know what.  
17 Let me keep this. Let's bring them all in then and we'll  
18 send, you know, I guess we'll try to do the pretrial  
19 instructions and read them the Information and just send them  
20 home then. All right.

21 (Prospective jurors enter at 4:09 p.m.)

22 THE COURT: All right. Will counsel stipulate to the  
23 presence of the panel?

24 MS. FLECK: The State does, Your Honor.

25 MR. FELICIANO: Yes, Your Honor.

1 THE COURT: All right. Ladies and gentlemen,  
2 obviously that was considerably longer than a 10-minute break.  
3 I apologize for that. On the good side, we have used that  
4 time to figure out who is and who is not going to be on this  
5 jury. Most of you are actually free to leave right now. Let  
6 me read some badge numbers.

7 The following jurors are free to go. Please report  
8 to the third floor jury services room, turn in your badges,  
9 and they'll give you check-out instructions. Jurors with  
10 Badge Numbers 053, Mr. Correa, you're free to go; Badge No.  
11 068, Mr. Aguilar; Badge No. 013, Ms. Barrow; Badge No. 022,  
12 Mr. Winings or Winnings; Badge No. 058, Ms. Cary, is it Cary  
13 or Cory?

14 PROSPECTIVE JUROR NO. 058: Cory.

15 THE COURT: Cory. I'm sorry. Ms. Cory; Badge  
16 No. 027, Mr. Parry; Badge No. 029, Ms. McClure; Badge No. 030,  
17 Mr. Meckley; Badge No. 032, Mr. Bean; Badge No. 037,  
18 Ms. Leavitt; Badge No. 064, Ms. Temple; Badge No. 059,  
19 Ms. Crockett; Badge No. 069, Ms. Martinez; Badge No. 043,  
20 Ms. Valerio; Badge No. 044, Mr. Nicol; Badge No. 055,  
21 Ms. Quinte; Badge No. 071, Ms. Rivera; Badge No. 049,  
22 Mr. Iverson.

23 And then let's move some of the people up and then  
24 I'll give some more names. I just want to get the -- kind of  
25 sort out the crowd a little bit.

1           THE COURT: All right. Yeah, everyone else who was  
2 seated behind that, the rail, is also free to go whether I  
3 called your badge number or not.

4           (Prospective jurors excused at 4:14 p.m.)

5           THE COURT: All right. Let me just make sure that we  
6 have the right jurors still here. So we should have, starting  
7 from the upper left-hand corner, Mr. Brahmer, Badge No. 1;  
8 Mr. Richard, Badge No. 2; Mr. Schmidt, Badge No. 5;  
9 Mr. Cordero, Badge No. 16; Mr. Helbert, Badge No. 17; Ms.  
10 Page, Badge No. 18; Ms. Johnson, Badge No. 20, correct.

11           And in the front here is: Mr. Thaler, Badge No. 21;  
12 Ms. Stiperski, Badge No. 62; Mr. Carrera, Badge No. 28;  
13 Mr. Dell, Badge No. 31; Ms. Moreno-Zepeda, Badge No. 35;  
14 Mr. Gebrechristos, Badge No. 39; and Mr. Garwood, Badge No.  
15 48, correct.

16           All right. Ladies and gentlemen, you are now the  
17 jury in this case. The clerk will now swear the members of  
18 the prospective panel in.

19           (Jury seated and sworn at 4:15 p.m.)

20           THE COURT: Let's wait for a minute. Randy's going  
21 to hand you some blue badges which will identify yourself as  
22 actual jurors in the case, and notepads as well.

23           THE MARSHAL: The white badges you can get rid of at  
24 this time. Go ahead and make sure you're wearing the blue  
25 badges at all time in the building.

1           THE COURT: All right. Ladies and gentlemen, again,  
2 thank you for your service. You are now going to be the jury  
3 in this case. Let me just tell you what the schedule is going  
4 to be. We will probably quit before 5:00 o'clock. We are  
5 going to -- I'm going to read you some pretrial instructions.  
6 The clerk will read the Information, which is the charging  
7 document in this case. We will then adjourn for the day.

8           We'll start again at 10:00 o'clock tomorrow morning  
9 and go as far as we can toward 5:00 o'clock, and we'll resume  
10 again on Thursday. I'll have to tell you what the exact  
11 time is. It kind of depends on how far we get on Thursday.  
12 But as I indicated, the parties are very confident that we  
13 should have this case done no later than Friday, and hopefully  
14 before Friday, but obviously it depends on how things go.

15           Ladies and gentlemen, now that you are jurors in this  
16 case, you are admonished that no juror may declare to a fellow  
17 juror any fact relating to this case of his or her own  
18 knowledge. If any juror discovers during the trial or after  
19 you have retired to deliberate that you or any other juror has  
20 personal knowledge of any fact or controversy in this case,  
21 you shall disclose that situation to me in the absence of the  
22 other jurors.

23           What that means is if you learn during the course of  
24 the trial that you are acquainted with the facts of this case  
25 or the witnesses that testify in this case, and you have not

1 previously told us of that relationship, you must declare that  
2 fact to me. The way that you communicate with me is through  
3 our marshal, Randy.

4 What you do is you take the notepads that you've been  
5 given, write a note, put your juror number on it. Not the  
6 badge number that we've been referring to you throughout, but  
7 the new number that is on the blue badge that you have. Give  
8 that note to him. He'll give that note to me and we'll figure  
9 out what to do from there.

10 As I mentioned before, during the course of the  
11 trial, the attorneys for both sides, court personnel other  
12 than the marshal, myself, and anyone associated with this case  
13 are not permitted to talk to you. By law, if we see you in  
14 Vons tonight for example, or on the street, we have to walk  
15 away, not even say hi or not say how things are going. We are  
16 not permitted to speak with you in any way.

17 If during this trial anyone that you believe to be  
18 associated with this case, whether a witness or a party or  
19 someone who works for one of the attorneys in this case, does  
20 attempt to speak with you, please notify Randy at your  
21 earliest possible opportunity, and we will address that.

22 You are also admonished that you are not to visit the  
23 scene of any of the acts or occurrences mentioned during this  
24 trial unless specifically directed to do so by the Court. The  
25 reason we give you this instruction is not because we don't

1 want you to know what happened, but because this is Las Vegas.  
2 There's constant construction.

3 It's entirely possible that since the charged  
4 incidents in this case occurred things may be different. The  
5 street may have been different. A hundred houses may have  
6 been constructed in the neighborhood.

7 And so if you tried to visit the crime scene or any  
8 other scenes mentioned in this case by yourself, you may come  
9 away thoroughly confused or misled as to what actually  
10 happened, especially in a case like this where a considerable  
11 amount of time has passed since the allegations occurred.

12 This is a criminal case commenced by the State of  
13 Nevada. Sometimes I may refer to it as the State vs.  
14 Guillermo Renteria-Novoa. This case is based upon an  
15 Information which, as I mentioned earlier, is a charging  
16 document. The Information in this case is actually titled The  
17 Second Amended Information. You don't have to know why it's  
18 called that. Just know that that is the document that I'm  
19 referring to whenever I mention that name.

20 The clerk will now read that Information, second  
21 amended Information to you and state the plea of the  
22 defendant.

23 (Information read - not transcribed.)

24 THE COURT: All right. Ladies and gentlemen, I know  
25 that the clerk just read you a very extensive list of charges.

1 At the end of this case you will be given a packet of papers  
2 which will contain the instructions on the law, and everything  
3 that was just read to you will be in those papers, so that you  
4 can read them at your own leisure when the case is over.

5 This case is based upon the second amended  
6 Information which has just been read to you by the clerk. You  
7 should distinctly understand that the Information is simply a  
8 charge and it is not in any sense evidence of the allegations  
9 that it contains.

10 The defendant has pled not guilty to the charges.  
11 The State therefore has the burden of proving each of the  
12 essential elements of the Information beyond a reasonable  
13 doubt. The purpose of this trial is to determine whether the  
14 State will meet that burden.

15 It is your primary responsibility as jurors to find  
16 and determine the facts. Under our system of criminal  
17 procedure, you are the sole judge of the facts. You are to  
18 determine the facts from the testimony you hear and the other  
19 evidence, including exhibits introduced in court. It is up to  
20 you to determine the inferences which you feel may be properly  
21 drawn from the evidence.

22 The parties may sometimes present objections to some  
23 of the testimony or other evidence. At times I may sustain  
24 those objections or direct that you disregard certain  
25 testimony or exhibits. You must not consider any evidence to

1 which an objection has been sustained or which I have  
2 instructed you to disregard.

3 It is the duty of a lawyer to object to evidence  
4 which he believes may not properly be offered, and you should  
5 not be prejudiced in any way against the lawyer who makes  
6 objections on behalf of the party which he represents.

7 Let me just take a quick break. I know I'm kind of a  
8 fast reader. If I'm going too fast or if you need anything  
9 repeated or don't understand it, please raise your hand and  
10 let me know. All right.

11 I may also find it necessary to admonish the lawyers,  
12 and if I do so, you should not show prejudice towards the  
13 lawyer or his client because I found it necessary to admonish  
14 him.

15 Throughout the trial, if you cannot hear a question  
16 asked by the attorney or the answer given by any witness,  
17 please raise your hand as an indication. If I don't see your  
18 hand up, please say, excuse me, I didn't hear that, and we  
19 will ask that the question be repeated or the answer be  
20 repeated.

21 If you wish, you may take notes that help you  
22 remember what any witness has said. If you do take notes,  
23 please keep those notes to yourself until you and your fellow  
24 jurors go to the jury room to decide the case.

25 Do not let note-taking distract you so that while



1 you're writing down the answer to one question, three or four  
2 more questions are asked and answered and go right past you  
3 and you have no recollection of those answers. You should  
4 rely upon your own memory of what was said and not be overly  
5 influenced by notes of other jurors when you go back to  
6 deliberate.

7           This case will proceed in the following order. First  
8 the State will make an opening statement outlining its case.  
9 The opening statement is a road map. The opening statement is  
10 not itself evidence. Rather the State will be telling you  
11 what they expect the evidence will be. It is up to you to  
12 decide what the evidence actually demonstrates after you have  
13 heard the testimony and seen the evidence.

14           After the State opens, the defendant has a right to  
15 make an opening statement if he or she wishes to do so.  
16 Neither party is required to make an opening statement. After  
17 the opening statements, the State will first introduce  
18 evidence. At the conclusion of the State's evidence the  
19 defendant has the right to introduce evidence. However,  
20 please remember the defendant is not obligated to present any  
21 evidence or to prove his innocence.

22           The law never imposes upon the defendant in a  
23 criminal case the burden of calling any witnesses or  
24 introducing any evidence. The defendant and his attorneys can  
25 sit through the entire trial and do nothing, not ask a single

1 question, not call a single witness, do nothing at all,  
2 because the defendant has no burden of proof in a criminal  
3 trial.

4           The State has to prove two things to you. First the  
5 State has to prove to you beyond a reasonable doubt that a  
6 crime occurred, and secondly the State has to prove to you  
7 also beyond a reasonable doubt that the defendant is the  
8 person who did it. At the close of the defendant's case, if  
9 any, the State may introduce rebuttal evidence.

10           At the conclusion of all the evidence I will instruct  
11 you on the law. You must not be concerned with the wisdom of  
12 any rule of law stated in the instructions that I give to you  
13 regardless of any opinion you may have as to what the law  
14 ought to be. It would be a violation of your oath to base a  
15 verdict upon any other view of the law than that given to you  
16 by the Court.

17           As I mentioned before, I don't write the law. The  
18 law is written by the legislature and the governor, and it is  
19 interpreted by the Nevada Supreme Court. I simply read the  
20 law as it is written by these other entities.

21           After the instructions on the law are read to you,  
22 each party has the opportunity to argue orally in support of  
23 his or her case. This is called closing argument or  
24 summation. What is said in closing is not evidence. The  
25 arguments are designed to summarize and interpret the evidence

1 for you and show you how the evidence and the law relate one  
2 to another.

3 Since the State has the burden of proving the  
4 defendant guilty beyond a reasonable doubt, the State has the  
5 right to both open and close the arguments, which means at the  
6 end of the trial the State gets to argue to you twice and the  
7 defense gets to argue to you once.

8 After the attorneys have presented their argument,  
9 you will retire to select a foreperson, to deliberate and  
10 arrive at your verdict. Faithful performance by you of your  
11 duties is vital to the administration of justice. It is your  
12 duty to determine the facts and determine them from the  
13 evidence and the reasonable inferences arising from the  
14 evidence, and in so doing you must not indulge in guesswork or  
15 speculation.

16 The evidence which you are to consider consists of  
17 the testimony of the witnesses and the exhibits admitted in  
18 evidence. You must not consider anything which you may have  
19 seen or heard when the court is not in session, even if what  
20 you see or hear is said or done by one of the parties or by  
21 one of the witnesses.

22 While you're in the courthouse, please always wear  
23 the badge the marshal just gave to you, which identifies  
24 yourself as a juror.

25 In every case there are two types of evidence; direct

1 evidence and circumstantial evidence. Direct evidence is  
2 testimony by a witness about what that person saw or heard or  
3 did. Circumstantial evidence is testimony or exhibits which  
4 are proof of a particular fact from which, if that fact is  
5 proven, you can infer the existence of a second fact.

6 A simple example of this is as follows. If a witness  
7 comes in here and says on May 4, 2012, I was standing outside  
8 my house and saw it rain, that is direct evidence that it  
9 actually rained on that particular day.

10 If the witness comes in and says, well, on May 11th,  
11 I didn't see it rain, but when I went to bed the streets were  
12 dry and when I woke up the next morning the streets were  
13 soaking wet and every house in the neighborhood was soaking  
14 wet, that is circumstantial evidence that it may have rained  
15 last night.

16 The witness did not actually see it rain, but he has  
17 testified to certain facts from which you can infer another  
18 fact, which is that it may have rained the night before.

19 You may consider both direct and circumstantial  
20 evidence in deciding this case. The law permits you to give  
21 equal weight to both types of evidence, but it is up to you to  
22 decide how much weight to give to any particular piece of  
23 evidence.

24 You are not to concern yourself in any way with the  
25 sentence which the defendant might receive if you should find

1 him guilty. Your function is solely to decide whether the  
2 State has proven to you beyond a reasonable doubt that the  
3 defendant is guilty of the crime charged. If and only if you  
4 find him guilty, then it becomes the duty of the Court at a  
5 later date to pronounce sentence.

6 You must not be influenced in any degree by any  
7 personal feeling of sympathy for or prejudice against any  
8 party to the case, for each party is entitled to the same fair  
9 and impartial consideration. No statement, ruling, remark or  
10 facial expression which I may make during the course of the  
11 trial is intended to indicate my opinion as to what the facts  
12 are.

13 I am not the judge of the facts in this case. You  
14 are the ones to determine the facts. In this determination,  
15 you alone must decide upon the believability of the evidence  
16 and its weight and its value.

17 In considering the weight and value of the testimony  
18 of any evidence, you may take into consideration the  
19 appearance, attitude and behavior of the witness, the interest  
20 of the witness in the outcome of the case, the relationship of  
21 the witness to any party to the case, the inclination of the  
22 witness to speak truthfully or not, the probability or  
23 improbability of the witness's statements, and all other facts  
24 and circumstances in evidence. Thus you may give the  
25 testimony of any witness just such weight and value as you

1 believe the witness is entitled to receive.

2           During the trial I may take notes of what the  
3 witnesses are saying. Do not make any inference from this  
4 action on my part. Do not take notes about something simply  
5 because I am. During the trial I'm required to be prepared  
6 for legal arguments made by the attorneys in the trial which  
7 may not have anything to do with the truth or untruth of  
8 anything a particular witness has said, therefore what I will  
9 be listening for and taking notes on may be something  
10 completely different than what you are to listen for or what  
11 you may consider to be important.

12           Until this case is submitted to you, do not talk to  
13 each other about it or about anyone who has anything to do  
14 with it until the end of the case, when you go to the jury  
15 room to decide your verdict. Do not talk with anyone else  
16 about this case or about anyone who has anything to do with  
17 the case until the trial is ended and you have been discharged  
18 as jurors.

19           Anyone else includes members of your family and your  
20 friends and your co-workers. Those of you who are employed  
21 need to call your boss and tell him or her that you have been  
22 chosen as a juror in a criminal case, and the judge has told  
23 you that this trial is going to last until Friday, hopefully  
24 earlier, depending how things go.

25           You may also tell them that if the trial is over

1 earlier than that, you will be back to work sooner. However,  
2 that is all you can tell them until you have been discharged  
3 by the Court.

4 Do not let anyone talk to you about the case or about  
5 anyone who has anything to do with the case. As I mentioned,  
6 if someone should try to talk to you about this case while  
7 you're serving as a juror, please report that to me  
8 immediately through our marshal. Do not read any news stories  
9 or articles, or listen to any radio or television reports  
10 about this case or about anyone who has anything to do with  
11 it.

12 Do not do any research or make any investigation  
13 about the case on your own. Do not make up your mind about  
14 what the verdict should be until after you've gone to the jury  
15 room to decide the case and you and your fellow jurors have  
16 discussed the evidence. It's important throughout the trial  
17 to keep an open mind.

18 At the end of the trial you'll have to make your  
19 decision based upon what you recall of the evidence. You will  
20 not have a written transcript to consult. Even though we do  
21 have the court recorder who records everything that is said in  
22 this courtroom, what is said is not typed up into a readable  
23 format. And it is sometimes difficult and time consuming for  
24 the recorder to play back lengthy portions of testimony.  
25 Therefore I would urge you to pay close attention to the

1 testimony as it is given.

2           After the attorneys have completed their questioning  
3 of any witness, if there's a factual question you would like  
4 answered which wasn't asked, or if you need clarification of  
5 any answer given by the witness, you may submit a question to  
6 the marshal in writing before the witness is excused from the  
7 courtroom.

8           The marshal will give me your question, and I will  
9 discuss the question with the attorneys and determine whether  
10 or not your question is proper, or if another witness later in  
11 the trial may be covering the exact same issue that you have  
12 asked. Since the law requires that any testimony asked of any  
13 witness comply with the rules of evidence, it's possible that  
14 I will deem your question inappropriate and might not ask it.

15           You are not to draw any inferences or conclusions one  
16 way or the other if a question that you want asked is  
17 submitted to me and yet it is not asked of the witness. If  
18 the question is asked and answered, you are not to place undue  
19 weight on the response given to your question.

20           There are certain questions which you might want to  
21 know the answers to, but which are never proper or allowed in  
22 any trial. These questions involve, for example, the criminal  
23 history, if any, of an accused, or questions which ask a  
24 witness to relate some fact which they only know because  
25 someone told it to them.



1           You may have heard by watching TV shows of the term  
2 "hearsay." The definition of hearsay is something that a  
3 witness knows only because they heard it from what some other  
4 witness said. That's sort of an imprecise definition.  
5 There's a legal definition which we don't need to get into.

6           But if the question that you want asked of any  
7 witness is something along those lines, please refrain from  
8 submitting them, because the Court will be required to sustain  
9 any objection of the attorneys to any questions like that.

10           This concludes the Court's pretrial instructions. It  
11 is now about 10 minutes to 5:00, so what we will do is we will  
12 adjourn for the day. We will reconvene at 10:00 o'clock  
13 tomorrow morning, and at 10:00 o'clock, or as soon as all of  
14 the jurors have gathered, we will begin the opening statements  
15 in this case.

16           During this break, ladies and gentlemen -- and you're  
17 going to hear me say this literally at every break. You'll  
18 probably start to memorize it by the time I say it a few more  
19 times. You are admonished that until you begin deliberations  
20 you are still under oath and not have been discharged. Do not  
21 reach any conclusions about this case as you have not heard  
22 the evidence.

23           Do not talk to anyone about this case. Do not  
24 investigate any facts of this case. Do not view any media,  
25 press or Internet reports about this case. Do not talk to

1 anyone who may be involved in any way with this case. Do not  
2 discuss the facts of this case with each other.

3 Remember to wear your badge at all times around the  
4 courthouse. Please leave your notebooks on your chairs, and  
5 we'll see you tomorrow morning at 10:00 o'clock. Thank you.

6 (Jurors recessed at 4:49 p.m.)

7 THE COURT: All right. We're now outside the  
8 presence of the jury. Is there anything that either side  
9 wanted to put on the record?

10 MS. FLECK: Nothing from the State.

11 MR. FELICIANO: No, Judge.

12 THE COURT: All right. See you guys tomorrow at  
13 10:00 o'clock.

14 MS. FLECK: Thank you.

15 MR. FELICIANO: Do you want us here at 10:00?

16 THE COURT: Yeah. If you can. I should be here  
17 before 10:00. I basically have one motion on tomorrow  
18 morning. It shouldn't take very long.

19 (The Court and clerk confer.)

20 THE COURT: All right. Let's see you guys at 10:00  
21 o'clock, and we -- there's a small possibility that  
22 Department 4 might need to use this courtroom in the morning.  
23 We might have to jump over to Bixler's courtroom, but let me  
24 figure it out first thing in the morning. All right.

25 (Court recessed for the evening at 4:51 p.m.)

**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.  
Aurora, Colorado**

  
KIMBERLY LAWSON

# **EXHIBIT 4**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

GUILLERMO RENTERIA-NOVOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 61865**  
District Court Case No. C268285

**FILED**  
**OCT 24 2014**

  
CLERK OF COURT

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 24<sup>th</sup> day of September, 2014.

C-10-268285-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4390673



IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
October 21, 2014.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams  
Deputy Clerk

AA 001346

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUILLERMO RENTERIA-NOVOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 61865

**FILED**

SEP 24 2014

*ORDER OF AFFIRMANCE*

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of 15 counts of sexual assault of a minor under 14 years of age, 8 counts of sexual assault of a minor under 16 years of age, 4 counts of sexual assault, 6 counts of lewdness with a minor under 16 years of age, and 3 counts of open or gross lewdness. Eighth Judicial District Court, Clark County; Jerome T. Tao, Judge.

Guillermo Renteria-Novoa is an ex-boyfriend of the mother of R.P. Renteria-Novoa and R.P. had sexual relations over many years while she was a teenager. Renteria-Novoa was charged with numerous counts of sexual assault with a minor, sexual assault, lewdness with a minor, and open or gross lewdness.

At trial, R.P. testified that the relationship occurred because Renteria-Novoa threatened to reveal to her family that she was sexually intimate with her older cousin. Renteria-Novoa's defense asserted that the relationship was consensual and that R.P. exchanged sexual favors for material goods. The jury convicted Renteria-Novoa on all counts.

### *R.P.'s Testimony*

During cross-examination, Renteria-Novoa sought to reveal inconsistencies in R.P.'s previous recountings of the alleged abuse. On redirect, the State asked R.P. leading questions about her past statements in order to show that those statements were consistent. On appeal, Renteria-Novoa argues that this part of R.P.'s trial testimony was inadmissible hearsay.

Under NRS 51.035(2)(b), an out-of-court statement is not hearsay if it is "[c]onsistent with the declarant's testimony and offered to rebut an express or implied charge against the declarant of recent fabrication . . . ." Here, the State offered the prior consistent statements in order to rebut the defense's attempts to show fabrication. Thus, the statements were admissible.

Renteria-Novoa also argues that the State improperly used leading questions to elicit testimony during redirect. NRS 50.115(3)(a) states that "[l]eading questions may not be used on the direct examination of a witness *without the permission of the court.*" (Emphasis added). "Whether leading questions should be allowed is a matter mostly within the discretion of the trial court, and any abuse of the rules regarding them is not ordinarily a ground for reversal." *Barcus v. State*, 92 Nev. 289, 291, 550 P.2d 411, 412 (1976) (internal quotations omitted). Here, the court decided that the leading questions were a permissible way to bring out the prior consistent statements. Because leading questions are only prohibited without permission of the trial court, and the trial court gave permission, we do not find the use of leading questions to be grounds for reversal.

### *Use of "victim"*

Renteria-Novoa argues that the prosecutor's use of the term "victim" throughout trial was improper because it was an assertion of his personal opinion that Renteria-Novoa was guilty of the charged crimes. He alleges that the prosecutor's repeated uses of "victim" were interjections of opinion, constituted vouching, and minimized the prosecution's burden of proof, all of which are examples of prosecutorial misconduct. *See, e.g., Rowland v. State*, 118 Nev. 31, 39-40, 39 P.3d 114, 119 (2002); *McGuire v. State*, 100 Nev. 153, 158-59, 677 P.2d 1060, 1064 (1984).

In the present case, the prosecutor's use of "victim" was not misconduct. First, it was not interjecting opinion because the prosecutor was not asking the jury to convict based upon the prosecutor's personal opinions. Second, Renteria-Novoa has not shown that the prosecutor had any intent to mislead. *McGuire*, 100 Nev. at 158-59, 677 P.2d at 1064. Third, the prosecutor's use of the term "victim" was not vouching because the jury would not reasonably infer that the prosecutor meant to speak to the veracity of the accuser. *See Rowland*, 118 Nev. at 39, 39 P.3d at 119. Finally, the Nevada Revised Statutes use "victim" to refer to the accuser, not only in defining crimes but also in setting forth procedures. *See, e.g., NRS 50.090*. Therefore, we conclude that the use of the term "victim" was not prosecutorial misconduct.

Renteria-Novoa also contests the use of "victim" in the jury instructions and in the witnesses' testimony. For similar reasons, namely that the term was used to define sexual assault and not to express the opinion of the speaker, we also conclude that the use of "victim" in the jury instructions and by the witnesses was not improper.



### *Brady violations*

Renteria-Novoa argues that the State violated his constitutional rights, under *Brady v. Maryland*, 373 U.S. 83 (1963), by suppressing evidence of the U-visa that R.P. received as a result of the charges in this case.

To demonstrate a *Brady* violation, "the accused must make three showings: (1) the evidence is favorable to the accused, either because it is exculpatory or impeaching; (2) the State withheld the evidence, either intentionally or inadvertently; and (3) prejudice ensued, i.e., the evidence was material." *State v. Huebler*, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 95 (2012) (internal quotations omitted). On the issue of prejudice, federal courts have held that there is no *Brady* violation so long as the evidence is eventually disclosed at a time when the defense can still use it. *Madsen v. Dormire*, 137 F.3d 602, 605 (8th Cir. 1998); see also *United States v. Scarborough*, 128 F.3d 1373, 1376 (10th Cir. 1997); *United States v. Word*, 806 F.2d 658, 665 (6th Cir. 1986); cf. *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977) ("There is no general constitutional right to discovery in a criminal case, and *Brady* did not create one . . ."). Here the defense discovered R.P.'s U-visa during trial and was able to present it to the jury through cross examination. There was no prejudice and, therefore, no *Brady* violation.

### *Renteria-Novoa's call logs and R.P.'s phone number*

Renteria-Novoa argues that the evidence of his phone records were not relevant at the time that they were admitted, because the jury did not yet hear testimony as to R.P.'s phone number. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than

it would be without the evidence.” NRS 48.015. Renteria-Novoa’s call logs were relevant because his numerous calls to R.P.’s phone tended to show that he had some kind of relationship with R.P.

Renteria-Novoa also argues that a witness’s testimony revealing R.P.’s phone number was hearsay because the witness only learned the number through R.P. telling him what it was. Evidence is inadmissible hearsay if it is an out-of-court “statement offered in evidence to prove the truth of the matter asserted” and it does not qualify for any exemption to the hearsay definition or exception to the hearsay rule. See NRS 51.035; NRS 51.065; NRS 51.075-.385.

We conclude that the witness testimony providing R.P.’s phone number was not hearsay. The witness testified that he knew her phone number belonged to her because he called her using the number. Thus, he was not testifying to an out-of-court statement about the number, but rather to his recollection of the number. See NRS 51.035. Accordingly, the district court did not abuse its discretion. *Chavez v. State*, 125 Nev. 328, 344, 213 P.3d 476, 487 (2009).

*Admission of prior bad acts*

Renteria-Novoa also argues that R.P.’s testimony, stating that he abused her two or three times a week, was inadmissible prior bad act evidence.

“[W]e review a district court’s decision to admit or exclude evidence for abuse of discretion.” *Id.* Prior bad act evidence is presumed inadmissible. *Ledbetter v. State*, 122 Nev. 252, 259, 129 P.3d 671, 677 (2006). However, prior bad acts are admissible when they show a common scheme or plan. See *id.* at 260, 129 P.3d at 677-78; see also NRS 48.045(2).

In *Daly v. State*, we held that uncharged acts of sexual abuse to which the child victim testified “fell within the ‘common scheme or plan’ exception to the general rule excluding evidence of prior bad acts.” 99 Nev. 564, 567, 665 P.2d 798, 801 (1983), *holding modified on other grounds by Richmond v. State*, 118 Nev. 924, 59 P.3d 1249 (2002). The child victim “testified that she had performed fellatio on appellant at his request an average of once or twice a week since she was about eight years old.” *Id.* at 566, 665 P.2d at 800. We noted that “[a]t least some of the uncharged acts allegedly occurred within the same time period as the charged acts, all alleged acts were between the appellant and his stepdaughter, and both the charged and uncharged acts allegedly occurred under very similar circumstances.” *Id.* at 567, 665 P.2d at 801.

The facts of this case are analogous to *Daly*. R.P. testified that the abuse occurred two or three times a week. The acts to which R.P. testified allegedly occurred at the time she lived at the University apartments, the same timeframe about which the jury heard that Renteria-Novoa committed other acts. The acts to which R.P. testified all involved her and Renteria-Novoa. And, according to R.P., the acts occurred in the same way every time. Under *Daly*, the uncharged acts of sexual abuse against R.P. fell within the common-scheme-or-plan exception to the rule against admitting prior bad acts. The district court did not abuse its discretion.

#### *Other issues*

Renteria-Novoa also argues that the State illegally excluded minority veniremembers from the jury, the information was insufficient and violated his constitutional rights, the district court misapplied Nevada’s rape-shield statute, his statement to police was not voluntary

and was given prior to him being mirandized, the evidence was insufficient to support the convictions, the convictions violated redundancy or double jeopardy principles, the district court's jury instructions misstated the law, the prosecution committed misconduct, and cumulative error warrants reversal. We find no merit in his arguments and affirm the judgment of the district court.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

*Hardesty* J.  
Hardesty

*Douglas* J.  
Douglas

*Cherry* J.  
Cherry

cc: Hon. Jerome T. Tao, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: October 21st, 2014

Supreme Court Clerk, State of Nevada

By Danip Thumma Deputy

AA 001354

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

GUILLERMO RENTERIA-NOVOA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 61865**  
District Court Case No. C268285

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: October 21, 2014

Tracie Lindeman, Clerk of Court

By: Sally Williams  
Deputy Clerk

cc (without enclosures):  
Hon. Jerome T. Tao, District Judge  
Clark County Public Defender  
Clark County District Attorney  
Attorney General/Carson City

**RECEIPT FOR REMITTITUR**

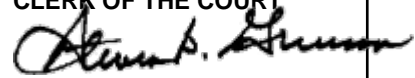
Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on OCT 24 2014.

HEATHER UNGERMANN  
Deputy District Court Clerk

**RECEIVED**

**OCT 25 2014**

CLERK OF THE COURT



**RSPN**  
**STEVEN B. WOLFSON**  
Clark County District Attorney  
Nevada Bar #001565  
**JAMES R. SWEETIN**  
Chief Deputy District Attorney  
Nevada Bar #005144  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,  
  
Plaintiff,  
  
-vs-  
  
**GUILLERMO RENTERIA-NOVOA,**  
**#2755564**  
  
Defendant.

CASE NO: **C-10-268285-1**  
DEPT NO: **XX**

**STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENTAL MEMORANDUM OF**  
**POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF**  
**HABEAS CORPUS (POST-CONVICTION)**

DATE OF HEARING: **FEBRUARY 7, 2019**  
TIME OF HEARING: **9:00 AM**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in the State's Response to Defendant's Supplemental Memorandum of Points and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction).

This response is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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**AA 001356**

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**POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On May 22, 2012, the State charged Guillermo Renteria-Novoa (“Petitioner”) by way of Second Amended Information with: Sexual Assault With a Minor Under the Age of 14 (Category A Felony – NRS 200.364, 200.366) (Counts 1, 2, 4, 5, 6, 9, 10, 12, 13, 14, 15, 17, 18, 20 & 21); Lewdness With a Child Under the Age of 14 (Category A Felony – NRS 201.230) (Counts 3, 7, 8, 16, 19 & 22); Sexual Assault With a Minor Under the Age of 16 (Category A Felony – NRS 200.364, 200.366) (Counts 23, 24, 25, 26, 27, 28, 29 & 30); Open or Gross Lewdness (Gross Misdemeanor – NRS 201.220) (Counts 11, 31 & 36); and Sexual Assault (Category A Felony – NRS 200.364, 200.366) (Counts 32, 33, 34 & 35).

On May 21, 2012, jury trial commenced, and on May 25, 2012, the jury found Petitioner guilty on all thirty-six counts. On September 6, 2012, Petitioner appeared in court with counsel for sentencing and was SENTENCED as follows: COUNTS 1, 2, 4, 5, 6, 9, 10, 12, 13, 14, 15, 17, 18, 20, 21 - LIFE with the possibility of parole after TWENTY (20) YEARS; - COUNTS 3, 7, 8, 16, 19, 22 - LIFE with the possibility of parole after TEN (10) YEARS; - COUNTS 23, 24, 25, 26, 27, 28, 29, 30 - LIFE with possibility of parole after TWENTY FIVE (25) YEARS; - COUNTS 11, 31, 36 - TWELVE (12) MONTHS Clark County Detention Center (CCDC) ; - COUNTS 32, 33, 34, 35 - LIFE with the possibility of parole after TEN (10) YEARS, with 762 DAYS credit for time served. FURTHER COURT ORDERED, COUNT 3 TO RUN CONSECUTIVE TO COUNT 1; COUNT 6 TO RUN CONSECUTIVE TO COUNTS 1 & 3; COUNT 23 TO RUN CONSECUTIVE TO COUNTS 1, 3, & 6 AND COUNT 32 TO RUN CONSECUTIVE TO COUNTS 1, 3, 6 & 23; REMAINING COUNTS TO RUN CONCURRENT. FURTHER COURT ORDERED, a special SENTENCE OF LIFETIME SUPERVISION is imposed upon release from incarceration and pursuant to NRS 179D.450, Petitioner must register as a Sex Offender within 48 hours of release from custody. The court entered its Judgment of Conviction on September 17, 2012.

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**AA 001357**



1 On October 5, 2012, Petitioner filed a Notice of Appeal from the Judgment of  
2 Conviction. He filed his opening brief on August 27, 2013, and the State responded on October  
3 7, 2013. The Nevada Supreme Court affirmed the Judgment of Conviction on September 24,  
4 2014. State v. Renteria-Novoa, Docket No. 61865 (Order of Affirmance, Sept. 24, 2014).

5 On February 9, 2015, Petitioner filed a Petition for Writ of Habeas Corpus. The State  
6 responded on April 13, 2015. The district court denied the petition as well as Petitioner's  
7 motion for appointment of counsel. On May 27, 2015, this Court filed its Findings of Fact,  
8 Conclusions of Law and Order. That denial was reversed on appeal. Renteria-Novoa v. State,  
9 133 Nev. Adv. Opp. 11 (Mar. 30, 2017).

10 Remittitur issued on April 24, 2017. After a hearing, this Court appointed counsel to  
11 represent Petitioner on May 11, 2017. Petitioner filed a Supplemental Memorandum of Points  
12 and Authorities in Support of Petition for Writ of Habeas Corpus (Post-Conviction) on  
13 November 9, 2018. The State now responds.

#### 14 **STATEMENT OF THE FACTS<sup>1</sup>**

15 In 2002, Roxana Perez moved from Mexico to Las Vegas. In 2003, she moved into the  
16 Libertwo Apartments. It was here where her mother met and began to date Guillermo Renteria-  
17 Novoa ("Petitioner"). In 2004, Roxana, her mother and sister, Petitioner, Roxana's cousin  
18 Yahir, and an uncle moved into University Apartments. At University, Roxana developed a  
19 relationship she described as "just kissing and being together" with Yahir. They never had sex.

#### 20 **University**

21 While at University, Petitioner walked in on Roxana and Yahir together. In 2005, the  
22 family moved from a two bedroom into a three bedroom (still at University), and once at this  
23 apartment, Petitioner began to threaten Roxana that he would tell her family what he had seen  
24 her doing with Yahir. Roxana, by this point 12 or 13 years old, became scared and embarrassed  
25 by this threat, and Petitioner began his assaults on Roxana shortly after he learned he could  
26 blackmail her with this information:

27 //

28  

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<sup>1</sup> The following statement of facts was taken from the State's Response Brief in State v. Renteria-Novoa, Docket No. 61865. **AA 001358**

1. Petitioner told Roxana to come into his room and take off her clothes one afternoon after school. He had her lie down on some blankets on the floor, where he then placed his hands on her breasts, his finger in and his mouth and tongue on her vagina, and placed his tongue on and in her anus.
2. Petitioner again told Roxana to come into his room one afternoon after school. This time, Petitioner likewise (under threat of revealing Roxana's relationship) licked Roxana's vagina and anus, touched her breasts, and placed his fingers inside Roxana's vagina and anus.
3. Petitioner also once touched Roxana's vagina and his own penis (under his clothing) simultaneously.

#### **Andover (under Age 14)**

In 2006, Roxana's family moved to Andover Place. She was 13 at the time, and turned 14 in August of 2007, while they were still living at Andover. Roxana was attending Orr Middle School at the time.

1. Petitioner made Roxana go into his bedroom, through the same threats of revealing her relationship with her cousin to her family, where he then touched her butt while she was walking around.
2. Petitioner made Roxana pull her shorts down and began to lick her vagina. He touched her breasts, and put his fingers inside her vagina and anus. He then turned her around and licked her anus.
3. Petitioner, sleeping next to Roxana in the bed they shared with Roxana's mother, began to rub Roxana's butt over her clothes, and try to touch her vagina inside her clothing.
4. Petitioner again, during the day, touched Roxana's breasts and placed his fingers and tongue inside her anus and vagina.
5. Petitioner grabbed Roxana's hand and placed it on his penis over his clothing. Petitioner then took his penis out and had Roxana begin to touch it, after which point he masturbated himself to ejaculation.

#### **Andover (over Age 14)**

Roxana turned 14 on August 30, 2007, while living at Andover.

1. Petitioner again threatened Roxana to get her to come into his room, where he touched her in substantially the same manner as his previous assaults.
2. Petitioner asked Roxana to lick his penis, which she refused to do.

**AA 001359**

1           **Tamarus Park**

2           In the end of 2007, Roxana moved to Tamarus Park, and she began attending Del Sol  
3 High School that fall. Roxana's mother was home in the afternoons during this time, and  
4 Petitioner gave Roxana a respite from his attentions while they lived at Tamarus Park.  
5 However, he continued to threaten to reveal her relationship with her cousin.

6           **Southern Cove**

7           In 2008, Roxana moved to Southern Cove Apartments. She was in the 10<sup>th</sup> grade, still  
8 at Del Sol High School. Roxana got a cell phone, after which Petitioner began calling and  
9 texting her incessantly. Petitioner saw Roxana at a party while at Southern Cove, and again  
10 reiterated his threat to reveal her secret. He also began to show up to the same places as  
11 Roxana.

- 12                     1.     Petitioner abused Roxana in substantially the same manner at  
13                             Southern Cove.  
14                     2.     Petitioner also, on a different day, had Roxana touch his penis,  
                              after which he ejaculated.

15           **Riverbend**

16           In August 2009, Roxana turned 16, and moved from Southern Cove to Riverbend  
17 Village Apartments. One last instance of abuse occurred at Riverbend. During this time,  
18 Roxana had been getting more mature and confident, and angrier with Petitioner's abuse.

19           Ultimately, Petitioner became frustrated with Roxana's rejecting his abuse, and told  
20 Roxana's cousin that Roxana needed to get back in touch with him. This spurred Roxana to  
21 tell her Aunt Janet about Petitioner's abuse. Her aunt then took her to see a counselor, told her  
22 mother, and ultimately, Petitioner was reported to the police in December 2009.

23           **Confession**

24           On February 18, 2010, Detective Ryan Jaeger with the Las Vegas Metropolitan Police  
25 Department left a business card with Petitioner's girlfriend asking Petitioner to call him back.  
26 Petitioner voluntarily called Det. Jaeger back a few hours later and left a voicemail. Det. Jaeger  
27 then called Petitioner back and spoke with him. He promised Petitioner that if Petitioner came  
28 down to give an interview he would not be arrested that day—a promise Det. Jaeger kept. Det.

**AA 001360**

1 Jaeger also told Petitioner that if he did not come give a statement an arrest warrant would  
2 eventually issue for him based on Roxana's statement.

3 Petitioner drove himself down to the police station on March 6, 2010, for his interview.  
4 Det. Jaeger Mirandized Petitioner and conducted an interview that lasted twenty-nine minutes.  
5 Although the room was small, Det. Jaeger did not handcuff or restrict Petitioner in any way,  
6 deny him the opportunity to use the restroom, deny him food or water, or threaten him. When  
7 the interview terminated, Petitioner left under his own power.

8 During the course of the interview, Petitioner admitted that the abuse started after he  
9 caught Roxana kissing her cousin. Petitioner further admitted to seeing Roxana's "body parts,"  
10 to seeing her "naked," to kissing her breasts, to masturbating in front of her, to seeing and  
11 touching her vagina (over clothing), and attempting to entice Roxana to have sex with him.

## 12 **ARGUMENT**

### 13 **I. PETITIONER HAS NOT SHOWN THAT HIS TRIAL COUNSEL WAS** 14 **CONSTITUTIONALLY INEFFECTIVE.**

15 The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal  
16 prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his  
17 defense." The United States Supreme Court has long recognized that "the right to counsel is  
18 the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686,  
19 104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323  
20 (1993).

21 To prevail on a claim of ineffective assistance of trial counsel, a defendant must prove  
22 he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of  
23 Strickland, 466 U.S. at 686-87, 104 S.Ct. at 2063-64. See also Love, 109 Nev. at 1138, 865  
24 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's  
25 representation fell below an objective standard of reasonableness, and second, that but for  
26 counsel's errors, there is a reasonable probability that the result of the proceedings would have  
27 been different. 466 U.S. at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison  
28 v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting the Strickland two-part test).

**AA 001361**

1 “[T]here is no reason for a court deciding an ineffective assistance claim to approach the  
2 inquiry in the same order or even to address both components of the inquiry if the defendant  
3 makes an insufficient showing on one.” Strickland, 466 U.S. at 697, 104 S.Ct. at 2069.

4 The court begins with the presumption of effectiveness and then must determine  
5 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
6 ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). “Effective counsel  
7 does not mean errorless counsel, but rather counsel whose assistance is ‘[w]ithin the range of  
8 competence demanded of attorneys in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432,  
9 537 P.2d 473, 474 (1975).

10 Counsel cannot be ineffective for failing to make futile objections or arguments. See  
11 Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the  
12 “immediate and ultimate responsibility of deciding if and when to object, which witnesses, if  
13 any, to call, and what defenses to develop.” Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167  
14 (2002).

15 Based on the above law, the role of a court in considering allegations of ineffective  
16 assistance of counsel is “not to pass upon the merits of the action not taken but to determine  
17 whether, under the particular facts and circumstances of the case, trial counsel failed to render  
18 reasonably effective assistance.” Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711  
19 (1978). This analysis does not mean that the court should “second guess reasoned choices  
20 between trial tactics nor does it mean that defense counsel, to protect himself against  
21 allegations of inadequacy, must make every conceivable motion no matter how remote the  
22 possibilities are of success.” *Id.* To be effective, the constitution “does not require that counsel  
23 do what is impossible or unethical. If there is no bona fide defense to the charge, counsel  
24 cannot create one and may disserve the interests of his client by attempting a useless charade.”  
25 United States v. Cronin, 466 U.S. 648, 657 n.19, 104 S.Ct. 2039, 2046 n.19 (1984).

26 “There are countless ways to provide effective assistance in any given case. Even the  
27 best criminal defense attorneys would not defend a particular client in the same way.”  
28 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after

**AA 001362**

1 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,  
2 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784  
3 P.2d 951, 953 (1989). In essence, the court must “judge the reasonableness of counsel’s  
4 challenged conduct on the facts of the particular case, viewed as of the time of counsel’s  
5 conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at 2066.

6 Even if a defendant can demonstrate that his counsel’s representation fell below an  
7 objective standard of reasonableness, he must still demonstrate prejudice and show a  
8 reasonable probability that, but for counsel’s errors, the result of the trial would have been  
9 different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
10 Strickland, 466 U.S. at 687, 104 S.Ct. at 2064). “A reasonable probability is a probability  
11 sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-  
12 89, 694, 104 S.Ct. at 2064-65, 2068).

13 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove the  
14 disputed factual allegations underlying his ineffective-assistance claim by a preponderance of  
15 the evidence.” Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore,  
16 claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must  
17 be supported with specific factual allegations, which if true, would entitle the petitioner to  
18 relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked”  
19 allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS  
20 34.735(6) states in relevant part, “[Petitioner] must allege specific facts supporting the claims  
21 in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your  
22 petition to be dismissed.” (emphasis added).

23 **A. Counsel was not ineffective for failing to challenge a juror.**

24 Counsel was not ineffective for failing to challenge Juror No. 35 because the juror had  
25 not indicated that she had fixed views that would have rendered her unable to faithfully fulfil  
26 her role to impartially consider the evidence brought by the State.

27 //

28 //

**AA 001363**

1 The Sixth Amendment right to trial by jury "guarantees to the criminally accused a fair  
2 trial by a panel of impartial, 'indifferent' jurors.'" Irvin v. Dowd, 366 U.S. 717, 722, 81 S. Ct.  
3 1639, 1642 (1961); Turner v. Louisiana, 379 U.S. 466, 85 S. Ct. 546 (1965). A juror is  
4 impartial if she has no "fixed opinions" which undermine her ability to determine a defendant's  
5 guilt based exclusively on the evidence the State produces at trial. Patton v. Yount, 467 U.S.  
6 1025, 1035, 104 S. Ct. 2885, 2891 (1984). To demonstrate that a juror is impartial, a defendant  
7 must show (1) that the juror has fixed views and (2) that because of those views the juror "did  
8 not honor his oath to faithfully apply the law." United States v. Quintero-Barraza, 78 F.3d  
9 1344, 1350 (9th Cir. 1995), cert. denied 519 U.S. 848 (1996). If a juror can "lay aside his  
10 opinion and render a verdict based on the evidence presented in court[,]" then that juror is  
11 impartial for purposes of the Sixth Amendment. Yount, 467 U.S. at 1037 n.2.

12 Here, Petitioner claims that her trial counsel was constitutionally ineffective for failing  
13 to challenge the inclusion of Juror No. 35, but Juror No. 35 made clear on the record that she  
14 could be impartial. During voir dire, Petitioner's counsel specifically questioned Juror No. 35  
15 about the duties she would have as a juror. She was clear from the beginning that Petitioner  
16 was presumed innocent, and that this presumption would remain until the State proved  
17 otherwise. Exhibit 3 at 92. Furthermore, she made clear that she would vote to find Petitioner  
18 not guilty if the State failed to prove its case. Id. When asked what she would do "if the State,  
19 after they present all their witnesses" had not "proven their case," she responded that she would  
20 vote "not guilty." Id.

21 This is all that is required under Patton and Irvin. The Constitution does not require  
22 jurors to lack opinions. Instead, it requires them to set those opinions aside and rely exclusively  
23 on the evidence presented at trial. Juror No. 35 indicated her willingness to do this, even though  
24 it would understandably be hard, and her opinion that a person is unlikely to lie about sexual  
25 assault did not render her ineligible to sit on a jury when that opinion was demonstrably not  
26 "fixed" and she indicated her willingness to hold the State to its burden.

27 //

28 //

**AA 001364**

1 In light of Juror No. 35's clear indication that she would honor her oath to faithfully  
2 apply the law, any challenge which Petitioner's counsel might have raised likely would have  
3 failed. Accordingly, raising a challenge for cause would have been futile and cannot therefore  
4 be used to demonstrate deficiency. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

5 Counsel was similarly not deficient for failing to strike Juror No. 35 peremptorily, as  
6 this was a strategic decision that is virtually unchallengeable. Dawson v. State, 108 Nev. 112,  
7 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953  
8 (1989). Voir-dire transcripts demonstrate that counsel used peremptory challenges to remove  
9 jurors who were much more likely much more problematic to Petitioner's case than Juror No.  
10 35.

11 Even if this Court finds that the use of peremptory challenges was not strategic,  
12 Petitioner has failed to show that their use fell below the Strickland standard. Petitioner's  
13 counsel used peremptory challenges on Jurors Nos. 053, 013, 027, 029, 031, 032, 059, 071,  
14 and 049. The State, of course, can only speculate as to why counsel used his challenges on  
15 these potential jurors, but the record does show why each stricken juror might have been  
16 detrimental to Petitioner's case.

17 Juror No. 13 was an elementary-school teacher who explicitly said she would have a  
18 tendency to side for the minor that was strong enough that she would be "a little worried" if  
19 someone with her mindset was on her jury. Exhibit 3 at 46-47. Juror No. 27 stated that he had  
20 family members who worked for metro and that he would "give an officer more credibility as  
21 opposed to someone who's not an officer[.]" Id. at 53. Juror No. 29 was a teacher who was  
22 marrying a police officer and who had previously reported cases of child neglect. Id. at 84-86.  
23 Juror No. 31 stated that he was "very protective" of girls and had previously been the victim  
24 of a crime. Id. at 88-90. Juror No. 49 was a teacher and had a young daughter whom she said  
25 it would be "very hard" not to picture "in the same situation" throughout the case. Id. at 127-  
26 28. Juror No. 71 had been sexually abused by her mother's husband. Id. at 123. Juror No. 32  
27 had been sexually abused as a child. Trial Transcript, Day 1, at 200-01. Juror No. 59 had a  
28 family member who was abused in a similar manner. Id. at 285-86. Juror No. 53 was a

**AA 001365**



1 radiologist who had previously worked on assault cases. Id. at 145. All of these potential jurors  
2 made statements which could have made their inclusion in the empaneled jury much more  
3 problematic to the defense.

4 In light of the jurors on which peremptory challenges were used, it would not be  
5 unreasonable for counsel to decline to use a peremptory challenge on a potential juror who had  
6 expressed on the record that she was willing to hold the State to its burden despite her belief  
7 that women are unlikely to lie about sexual assault. The jurors who ultimately were stricken  
8 expressed fix opinions, had a medical background, or shared experiences with the victim or  
9 law enforcement which a reasonable attorney could have believed were more likely to invade  
10 the jury's deliberations. Petitioner's counsel was not ineffective for making that strategic  
11 decision.

12 **B. Counsel was not ineffective for failing to sanitize the victim's pregnancy.**

13 Similarly, Petitioner has failed to show that counsel was ineffective for not sanitizing  
14 the victim's pregnancy to show motive to lie because (1) the proffered statement likely violated  
15 the Nevada Rape Shield Law itself and (2) counsel argued—repeatedly—that the victim was  
16 inconsistent in a way which was permissible.

17 “Although a criminal defendant has a due process right to introduce into evidence any  
18 testimony or documentation which would tend to prove the defendant's theory of the case, that  
19 right is subject to the rules of evidence[.]” Rose v. State, 123 Nev. 194, 205 n.18, 163 P.3d  
20 408, 416 n. 18 (2007) (quoting Vipperman v. State, 96 Nev. 592, 596, 614 P.2d 532, 534  
21 (1980)) (internal quotation and punctuation omitted). One of those rules of evidence is the rape  
22 shield law, codified as NRS 50.090.

23 The law exists to “protect rape victims from degrading and embarrassing disclosure of  
24 intimate details about their private lives and to encourage rape victims to come forward and  
25 report the crimes and testify in court protected from unnecessary indignities and needless  
26 probing into their respective sexual histories.” Johnson v. State, 113 Nev. 772, 776, 942 P.2d  
27 167, 170 (1997) (alterations and quotation marks omitted) (citing Summitt v. State, 101 Nev.  
28 159, 161, 697 P.2d 1374, 1375 (1985)). It forbids criminal defendants in sexual assault cases

**AA 001366**

1 from introducing “evidence of any previous sexual conduct of the victim of the crime to  
2 challenge the victim’s credibility.” NRS 50.090.

3 When her mother found out about Petitioner’s crimes, the victim was pregnant with her  
4 boyfriend’s—not Petitioner’s—child. Petitioner argues that counsel was ineffective for failing  
5 to sanitize this pregnancy and use evidence of a “mistake” the victim had made to show she  
6 had motive to lie. According to Petitioner, his theory throughout the trial was that the victim  
7 had lied about her age when Petitioner sexually abused her to insulate herself from her  
8 mother’s punishment upon discovering her pregnancy. Challenging her credibility in this  
9 manner would have been a flagrant violation of NRS 50.090 because it would have been  
10 *exactly* the kind of embarrassing disclosure the rape shield law exists to prevent even if counsel  
11 had not explicitly said that the victim was pregnant.

12 The Nevada Supreme Court agreed that “the admission of the ... pregnancy was not  
13 allowed under the Nevada Rape Shield Law.” Supplemental Petition at 15. Despite this,  
14 Petitioner argues that there was a “simple way” to “sanitize the pregnancy” that would have  
15 allowed him to both (1) avail himself of the defense’s theory and (2) not act contrary to Nevada  
16 evidentiary rules which forbid the criminal defendants from introducing “evidence of any  
17 previous sexual conduct of the victim of the crime to challenge the victim’s credibility.”  
18 Supplemental Petition at 15; NRS 50.090.

19 The solution offered by Petitioner was a statement calling the pregnancy “a mistake  
20 recently made by R.P. that that [sic] could negatively impact her the rest of her life with respect  
21 to opportunities in life, education, future relationships, her heath, her psychological state, as  
22 well as her financial and living situations; a mistake that would make her parents angry at;  
23 fearful for; disappointed in; and upset with her and would result in severe consequences.”  
24 Supplemental Petition at 15.

25 Counsel was not ineffective for failing to make such a statement, as it would likely have  
26 independently violated NRS 50.090. The Nevada Supreme Court has recognized that evidence  
27 that fails to specifically mention a victim’s prior sexual conduct can nevertheless violate the  
28 Nevada Rape Shield Law. See Aberha v. State, Docket No. 73121 (Order of Affirmance, Oct.

**AA 001367**

31, 2018) at 10-12 (affirming a district court’s holding that a hotel receipt indicating that a sexual assault victim had purchased a romance package violated NRS 50.090 despite not showing “sexual conduct, per se”). Accordingly, alluding to a victim’s sexual conduct by another name can still impermissibly violate NRS 50.090.

The statement offered above would have impermissibly alluded to the victim’s pregnancy. It is difficult to imagine a mistake—other than pregnancy—that a teenage girl could make which would “negatively impact her the rest of her life” in the ways mentioned by Petitioner.

When deliberating, “jurors may rely on their common sense and experience.” Meyer v. State, 119 Nev. 554, 568, 80 P.3d 447, 458 (2003). The difficulties associated with pregnancy and the blessings of childcare are nearly universally understood. It would not have been unreasonable for a juror to hear Petitioner’s proffered statement and immediately understand that this mistake with lifelong implications was an unplanned pregnancy. This argument, therefore, would not have sanitized the pregnancy at all; instead, it would have presented the jury with evidence of the victim’s prior sexual activity in violation of NRS 50.090.

Yet even assuming arguendo that a “sanitized” account of the victim’s pregnancy would not have independently violated the Rape Shield Statute, however, Petitioner has nevertheless failed to show that counsel was constitutionally ineffective for failing to sanitize the pregnancy for several reasons.

First, despite the protections of the Confrontation Clause, all trial “[e]vidence must be relevant, and ... even relevant evidence is inadmissible if its probative value ‘is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury.’” Rose, 123 Nev. at 205 n.18, 163 P.3d at 416 n. 18 (quoting NRS 48.035(1)).

This Court expressed its confusion as to the relevance of the victim’s pregnancy when counsel attempted to introduce it: “I’m still not sure why factually her pregnancy by someone who’s completely unconnected with the case gives her motive to lie about [Petitioner].” Any “mistake” which the victim made with her boyfriend—who, again, was not the Petitioner—was neither relevant to her motive nor probative of the same. It relies on the assumption that

**AA 001368**

1 the victim's mother would actually have been mad at her for getting pregnant and that their  
2 discovery of the fact that she had been abused years ago would have mitigated their  
3 disappointment in her for getting pregnant then. It further incoherently assumes that the  
4 victim's mother would not have been upset that her ex-boyfriend had sexually abused the  
5 victim when she was older. This argument does not withstand even basic scrutiny. The victim  
6 was a minor throughout the period where she was abused by Petitioner. She had no motive to  
7 lie about when the abuse began in light of her continued minority through each of Petitioner's  
8 abusive acts.

9 Indeed, "nothing logically links the victim's prior instance of sexual conduct with the  
10 alleged motive to lie. [Petitioner's] argument, when stripped bare, advances the theory that a  
11 defendant may circumvent the rape shield statute and explore the victim's prior sexual history  
12 whenever he asserts that the victim has any motive to lie, which is, of course, absurd." People  
13 v. Jones, 264 Ill. App. 3d 556, 566, 636 N.E.2d 604, 612 (Ill. Ct. App. 1993). In short, the  
14 argument relating to her mistake was irrelevant.

15 Second, Petitioner's counsel argued repeatedly that the victim's statements and  
16 testimony were inconsistent, which discredited her without violating the law. As the Nevada  
17 Supreme Court noted in its Order of Affirmance, counsel "sought to reveal [the]  
18 inconsistencies in [the victim's] previous recounting of the alleged abuse [during cross-  
19 examination]." Renteria-Novoa, Docket No. 61865 at 2.

20 Indeed, trial counsel thoroughly cross-examined the victim regarding her inconsistent  
21 statements and attempted to discredit the victim. For instance, trial counsel questioned the  
22 victim regarding the fact that she received a "U-Visa" as a result of her testimony, allowing  
23 her to remain in the country legally. Trial Transcript, Day 3 (May 23, 2012) at 146-47.  
24 Moreover, trial counsel questioned the victim regarding her statements to the school counselor,  
25 Id. at 153, her statements to her family, Id. at 154, and her statements to the police, Id. at 155.  
26 Trial counsel emphasized that the victim's statements were "inconsistent from one to the  
27 other" and that Petitioner was "entitled to impeach her on what she told the police initially to  
28 the next statement, which is inconsistent, to the next statement, which is inconsistent." Id. at

**AA 001369**

1 164. “[I]t’s different from what she said at the preliminary hearing, it’s different from what  
2 she said in her voluntary statement. It’s different from what...she said today.” Id. 167. The  
3 following colloquy took place:

4 Q: Now, today you testified that you put your hand [] that you  
5 would actually put your hand on his penis?

6 A: He would tell me to touch his penis.

7 Q: All right. Did you testify today that you actually put your hand  
8 on his penis?

9 A: Yes.

10 Q: Okay. Today, is that—that’s the first time we’re hearing that.  
11 That’s the first time you’ve said that, right?

12 A: I don’t think so. I think I said it before.

13 Q: Do you remember when you said it before?

14 A: Well, [] I talked [] I remember talking about it with Stacy.

15 Q: Okay. But you never said it in any of the previous statement  
16 that you gave?

17 A: I think the time I came in court for the first time.

18 Id. at 189-90.

19 Moreover, trial counsel emphasized that the victim had given inconsistent “stories”  
20 during closing arguments. Trial Transcript, Day 4 (May 24, 2012) at 183. Specifically:

21 “So one of the things that makes [the victim] not credible is the  
22 inconsistent stories that she told, and that’s one of the things that you  
23 can consider when you’re looking at her credibility, in addition to  
24 [telling] inconsistent stories to several people. In addition to the  
25 inconsistencies, you’re going to [] you heard testimony of her family,  
26 and her family also shows that she’s simply not credible...[s]he told  
27 her family several different stories.”

28 ...

“In addition to her family, she talked to a counselor. She told the  
counselor a different story. After she spoke to the counselor, she did  
a written statement for the police, which was different. Then she gave  
a recorded statement to the police several weeks later, which was also  
different. Then finally, at the preliminary hearing, that’s when she  
made the bulk of her allegations. That was completely different than  
anything she had ever said, and that was about nine months before any  
allegations came to light.”

...

**AA 001370**

1 “Now, let’s start with her family. What did she tell her family? [] She  
2 never said anything about any type of sexual contact with [Petitioner].  
3 She never said anything about sex with her cousin...she gave  
absolutely not details about what happened [to her aunt]. All she said  
is that she was just...being touched.”

4 ...

5 “Then we go to the written statement which happened the day the  
6 police were called. Again, [the victim] says that...her private parts  
7 were touched, he put his hand inside of her; however, there was not  
8 mention of some of the biggest details [] [or] the most egregious  
9 conduct here...no mention to the counselor, no mention to her family,  
10 no mention at all...[s]o a few weeks later, she does her recorded  
statement. Now she says the touching next started in 2004. This is  
2010 when she’s giving this statement, but she says it happened in  
2004, so it’s about five years now that she’s saying this happened. So  
we went from three years to one year to possibly five years. They  
asked her about the last time she was touched...she doesn’t mention  
anything about any type of anal licking or any type of vaginal licking.  
She just says that she was touched.”

11 ...

12 “Then we get to the preliminary hearing....[n]ow she is 11 years old  
13 when the touching started. Her breasts were touched, her vagina was  
14 touched. Now, she adds to the detail that [Petitioner] licked her vagina  
and licked her anus. So she simply is not credible when her story  
changes that way.”

15 Id. at 183-86. The simple fact of the matter is, trial counsel thoroughly emphasized the  
16 inconsistencies in the victim’s story in an attempt to discredit her. His decision to discredit her  
17 through inconsistent statements and not through showing her prior sexual history by alluding  
18 to her pregnancy was not deficient performance, but was a reasonable, virtually  
19 unchallengeable strategic decision. Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596  
20 (1992). Furthermore, because the inconsistencies did tend to discredit the victim’s testimony,  
21 Petitioner has failed to show that he was prejudiced by his counsel’s failure to discredit her in  
22 another way which has been shown to be impermissible.

23 Accordingly, this Court should hold that trial counsel was not constitutionally  
24 ineffective for failing to raise an argument to the jury that would have violated the Nevada  
25 Rape Shield Law.

26 Petitioner has not shown that his counsel was ineffective for failing to challenge Juror  
27 No. 35 or sanitize the victim’s pregnancy when her credibility was otherwise challenged. The  
28 instant petition should be denied.

**AA 001371**

1     **II.     THERE IS NO ERROR TO CUMULATE.**

2             Petitioner asserts a claim of cumulative error in the context of ineffective assistance of  
3 counsel. The Nevada Supreme Court has never held that instances of ineffective assistance of  
4 counsel can be cumulated; it is the State’s position that they cannot. However, even if they  
5 could be, it would be of no moment as there was no single instance of ineffective assistance in  
6 Petitioner’s case. See United States v. Rivera, 900 F.2d 1462, 1471 (10th Cir. 1990) (“[A]  
7 cumulative-error analysis should evaluate only the effect of matters determined to be error,  
8 not the cumulative effect of non-errors.”). Furthermore, Petitioner’s claim is without merit.  
9 “Relevant factors to consider in evaluating a claim of cumulative error are (1) whether the  
10 issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the  
11 crime charged.” Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000). Furthermore, any  
12 errors that occurred at trial were minimal in quantity and character, and a defendant “is not  
13 entitled to a perfect trial, but only a fair trial.” Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114,  
14 115 (1975).

15             Here, Petitioner has failed to demonstrate any error, and therefore, necessarily, there is  
16 no error for this Court to cumulate. The issue of guilt in this case was not close, as Petitioner  
17 admitted to many of the counts against him and the victim testified in detail of the others. See  
18 Gaxiola v. State, 121 Nev. 638, 647, 119 P.3d 1225, 1231 (2005) (stating that the  
19 uncorroborated testimony of a victim, without more, is sufficient to uphold a rape conviction).  
20 Furthermore, as the claims of error themselves were meritless, the quantity and character of  
21 the errors cannot be shown to warrant relief. Only the gravity of the crimes charged weighs in  
22 Petitioner’s favor, as it cannot be overstated. However, even grave crimes do not warrant relief  
23 for cumulative error when there is no error at all. For these reasons, this Court should deny the  
24 instant supplemental petition.

25     //

26     //

27     //

28     //

**AA 001372**

1 **III. PETITIONER IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

2 NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

3 1. The judge or justice, upon review of the return, answer and all  
4 supporting documents which are filed, shall determine whether an  
5 evidentiary hearing is required. A petitioner must not be discharged  
6 or committed to the custody of a person other than the respondent  
7 *unless an evidentiary hearing is held.*

8 2. If the judge or justice determines that the petitioner is not entitled  
9 to relief and an evidentiary hearing is not required, he shall dismiss  
10 the petition without a hearing.

11 3. If the judge or justice determines that an evidentiary hearing is  
12 required, he shall grant the writ and shall set a date for the hearing.

13 (emphasis added). The Nevada Supreme Court has held that if a petition can be resolved  
14 without expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110  
15 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002).  
16 A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual  
17 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled  
18 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; see also Hargrove v. State, 100  
19 Nev. 498, 503, 686 P.2d 222, 225 (1984) (holding that “[a] defendant seeking post-conviction  
20 relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the  
21 record”). “A claim is ‘belied’ when it is contradicted or proven to be false by the record as it  
22 existed at the time the claim was made.” Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002). It  
23 is improper to hold an evidentiary hearing simply to make a complete record. See State v.  
24 Eighth Judicial Dist. Court, 121 Nev. 225, 234, 112 P.3d 1070, 1076 (2005) (“The district  
25 court considered itself the ‘equivalent of . . . the trial judge’ and consequently wanted ‘to make  
26 as complete a record as possible.’ This is an incorrect basis for an evidentiary hearing.”).

27 Further, the United States Supreme Court has held that an evidentiary hearing is not  
28 required simply because counsel’s actions are challenged as being unreasonable strategic  
29 decisions. Harrington v. Richter, 131 S.Ct. 770, 788 (2011). Courts may neither indulge post  
30 hoc rationalization for counsel’s decision-making that contradicts the available evidence of  
31 counsel’s actions, nor they insist counsel confirm every aspect of the strategic basis for his or

**AA 001373**



1 her actions. Id. There is a “strong presumption” that counsel’s attention to certain issues to  
2 the exclusion of others reflects trial tactics rather than “sheer neglect.” Id. (citing Yarborough  
3 v. Gentry, 540 U.S. 1, 124 S.Ct. 1 (2003)). Strickland calls for an inquiry in the *objective*  
4 reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. 466 U.S.  
5 668, 688, 104 S.Ct. 2052, 2065 (1994).

6 The strong presumption that counsel was employing trial tactics and not merely  
7 neglecting to act like a reasonable attorney has not been rebutted by Petitioner in the instant  
8 Supplemental Petition. To the contrary, even if what Petitioner has alleged was true, he would  
9 not be entitled to relief as each claim of ineffective assistance involves either (1) requests that  
10 counsel take steps that ultimately would have been futile; or (2) unchallengeable strategic  
11 decisions. With these challenges, the record is already sufficiently developed, and an  
12 evidentiary hearing is not needed to further it. Accordingly, Petitioner’s request for an  
13 evidentiary hearing to which he is not entitled should be denied.

#### 14 CONCLUSION

15 For the aforementioned reasons, the instant Petition for Writ of Habeas Corpus should  
16 be DENIED.

17 DATED this 31st day of December, 2018.

18 Respectfully submitted,

19 STEVEN B. WOLFSON  
20 Clark County District Attorney  
Nevada Bar #001565

21 BY /s/ JAMES R. SWEETIN  
22 JAMES R. SWEETIN  
23 Chief Deputy District Attorney  
Nevada Bar #005144

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AA 001374

**CERTIFICATE OF SERVICE**

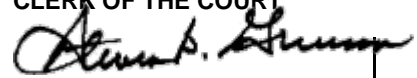
I hereby certify that service of the above and foregoing was made this 31st day of  
DECEMBER, 2018, to:

JEAN SCHWARTZER, ESQ.  
jean.schwartzter@gmail.com

BY /s/ HOWARD CONRAD  
Secretary for the District Attorney's Office  
Special Victims Unit

hjc/SVU

**AA 001375**



1 RPLY

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10 Attorney for Petitioner

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 GUILLERMO RENTERIA-NOVOA, )

14 Petitioner, )

15 v. )

CASE NO: C268285-1

DEPT NO: XX

16 RENEE BAKER, WARDEN, )

17 Lovelock Correctional Center )

18 Respondent. )

19 REPLY TO STATE'S RESPONSE TO SUPPLEMENTAL MEMORANDUM OF  
20 POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS  
21 CORPUS (POST-CONVICTION)

22 DATE OF HEARING: March 19, 2019

23 TIME OF HEARING: 9:00 A.M.

24 COMES NOW, GUILLERMO RENTERIA-NOVOA ("Petitioner"), by and through  
25 his attorney, JEAN SCHWARTZER, ESQ., and hereby submits the instant Reply to the  
26 State's Response to Supplemental Memorandum of Points and Authorities in Support of  
27 Petition for Writ of Habeas Corpus (Post-Conviction).

28 AA 001376

1 This Reply is made and based upon all the papers and pleadings on file herein, the  
2 attached points and authorities in support hereof, and oral argument at the time of  
3 hearing, if deemed necessary by this Honorable Court.

4  
5 DATED this 6<sup>th</sup> day of March, 2019.

6 Respectfully submitted,

7  
8 /s/ Jean J. Schwartzer  
9 JEAN J. SCHWARTZER, ESQ.  
10 Nevada Bar No. 11223  
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12 10620 Southern Highlands Parkway  
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17 Counsel for Petitioner

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1 cannot fathom how the victim could lie before ever hearing any evidence:

2  
3 Defense Counsel: And considering the nature of those charges,  
4 does that factor into it in any way as far as  
5 your ability to be fair?

6 Prospective Juror: It is a very heinous crime in my eyes. I don't  
7 see why anybody would lie about something  
8 like that, especially if it happened so long  
9 ago, for her to, you know, bring those  
10 feelings back and just talk about that, it's just  
11 really hard to know that she's lying about  
12 something like that. I just....

13 Defense Counsel: Okay. So do you think that some child would  
14 never lie in that circumstance, or they could  
15 possibly lie?

16 Prospective Juror: I mean there is that possibility. But I believe  
17 she's 19 years old now, so for her to just  
18 revisit that and bring that all to light and  
19 want to go through all of this is just hard to,  
20 you know, really tell that she's—wouldn't lie  
21 about that.

22 (See Exhibit 3 of Supplemental Memorandum, 92-93)(emphasis added).

23 The State claims that “the Constitution does not require jurors to lack opinions.”  
24 (See SR 9). While the State does not actually address the specific opinion it is referring to,  
25 one can assume the reference is to the statements regarding the opinion that the victim  
26 would not “lie about something like this.” **However, the Constitution does require that**  
27 **jurors lack this particular opinion.** Juror No. 12 had a “fixed opinion” that someone like  
28 the victim would not “lie about something like this.” As a result of this fixed opinion  
regarding the victim’s credibility, Juror No. 12 “could not judge impartially the guilt of  
the [Petitioner].” Patton v. Yount, 467 U.S. 1025, 1035, 104 S.Ct. 2885, 2891 (1984) (citation  
omitted); United States v. Quintero-Barraza, 78 F.3d 1344, 1350 (9th Cir. 1995) (Cert  
denied by Quintero-Barraza v. United States, 519 U.S. 848, 117 S.Ct. 135 (1996) (No. 95-  
9280). Even if this Court finds that Juror No. 12’s bias was borderline, “any doubts to

AA 001379

1 whether or not this Juror was biased “must be resolved against the juror.” United  
2 States v. Gonzales, 214 F.3d 1109, 1114 (9th Cir.2000).

3 Any argument that the Juror No. 12’s initial statements regarding the presumption  
4 of innocence and burden of proof, somehow, neutralize or wash away her clearly stated  
5 bias puts the cart before the horse. In order for a juror to address whether or not the State  
6 has met its burden, it must, *inter alia*, determine the credibility of the State’s witnesses.  
7 The most important witness for the State is the victim, considering there was no evidence  
8 of most of the crimes other than her testimony. If a juror has already made a decision  
9 regarding the credibility of the victim before hearing any evidence and goes into the  
10 analysis of whether or not the State met its burden with that biased view of the victim’s  
11 credibility, then the juror is biased regardless of whether or not she said at some point  
12 during voir dire that she would find the defendant not guilty if the State did not meet its  
13 burden. **A juror cannot come to the conclusion that the State did not meet its burden**  
14 **without bias if the juror cannot fathom how the victim would lie.**

15 The State then argues that defense counsel’s failure to challenge for cause or strike  
16 Juror No. 12 “was a strategic decision that is virtually unchallengeable.” (See SR 10). The  
17 State then lists all the jurors that defense counsel used peremptory challenges on and  
18 why, presumably, they were challenged and then argues that “it would not be  
19 unreasonable for counsel to decline to use a peremptory challenge on a potential juror  
20 who has expressed on the record that she was willing to hold the State to its burden  
21 despite her believe that women are unlikely to lie about sexual assault.” (See SR 11). This  
22 argument is speculative and misconstrues Juror No. 12’s statements.

23 First, why defense counsel chose to not challenge Juror No. 12 but did challenge  
24 other jurors is pure speculation. The only way to determine why defense counsel made  
25 the decisions he and she made is to question them at an evidentiary hearing. Moreover,  
26 effectively challenging some jurors and ineffectively failing to challenge others are not  
27 mutually exclusive.

28 Second, **Juror No. 12 did not say**, “women are unlikely to lie about sexual assault  
AA 001380

1 but despite that, I will hold the State to its burden.” **She did not say**, “while I don’t  
2 understand why a woman would like about this but I will listen and make a  
3 determination regarding credibility at the end of presentation of all evidence.” **She did**  
4 **not say**, “if I don’t believe the victim is telling the truth, I will find that the state did not  
5 meet its burden.”

6 Juror No. 12 said she understood the presumption of innocence; if the State did  
7 not meet its burden she would find Petitioner not guilty; **and then she said: “I don’t see**  
8 **why anybody would lie about something like that”.....“she’s—wouldn’t lie about**  
9 **that.”** These statements clearly demonstrate that Juror No. 12 was biased in favor of the  
10 victim witness and could not “lay aside [her] opinion and render a verdict based upon  
11 the evidence in court.” Yount, 467 U.S. at 1037 n.12. Juror No. 12 had views that were  
12 fixed in favor of the victim witness. Therefore Juror No. 12 was admittedly biased and  
13 partial to the State. Id.; Quintero-Barraza, 78 F.3d at 1350. **Any doubts to whether or not**  
14 **this Juror was biased “must be resolved against the juror.”** Gonzales, 214 F.3d at 1114  
15 (emphasis added). **“The presence of a biased juror cannot be harmless; the error**  
16 **requires a new trial without a showing of actual prejudice.”** Dyer v. Calderon, 151 F.3d  
17 970, 973, n. 2 (9th Cir.1998); *see also* United States v. Martinez-Salazar, --- U.S. ---, ---, 120  
18 S.Ct. 774, 782, 145 L.Ed.2d 792 (2000).

19 Therefore, the fact that defense counsel did not challenge this juror for cause or  
20 use a peremptory challenge on her falls below an objective standard of reasonableness.  
21 Counsel’s failure to do so prejudiced Petitioner because the presence of a biased juror  
22 cannot be harmless and Petitioner was, in fact, found guilty. Therefore, Petitioner  
23 received ineffective assistance of counsel during jury selection, was prejudiced and is  
24 entitled to a new trial. Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, (1984);  
25 Dyer, *supra*; Gonzales, *supra*; *see also* Martinez-Salazar, *supra*.

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AA 001381



## II. GROUND TWO: SANTIZATION OF VICTIM'S PREGNANCY

In response to Petitioner's proposed sanitization of R.P.'s pregnancy, the State's argument is three fold: 1) R.P.'s pregnancy was irrelevant and she had no motive to lie; 2) the proposed sanitization (or any modification thereof) would have alluded to R.P.'s sexual conduct in violation of NRS 50.090; and 3) defense counsel attempted to discredit R.P. by bringing out inconsistencies in her testimony and therefore cannot be deemed ineffective for failing to sanitize R.P.'s pregnancy.

### A. R.P.'s Motive to Lie Was Relevant

First, the district court already determined that R.P.'s pregnancy was relevant. Although the Court initially did not understand the relevance, after hearing argument from defense counsel, the relevance became apparent. In fact, the Court went so far as to find that it "cut to the heart" of Petitioner's defense. (*See* T1 at 28-42). Relevance is an incredibly low threshold. It does not matter that the father was another man or that the alleged sexual assault occurred years prior. The motive to lie is simple: R.P. had engaged in conduct (teenage sex) and created a situation (pregnancy) for herself that would severely upset and anger any parent. To divert attention and anger away from herself for engaging in this conduct, she told her mother that Petitioner had been sexually assaulting her. The State claims that this "incoherently assumes that the victim's mother would not have been upset that her ex-boyfriend had sexually abused the victim when she was older." (*See* SR 14). The State misunderstands the crux of Petitioner's argument. R.P.'s mother was going to be angry regardless. By telling her mother than Petitioner had been abusing her, **her mother would focus her anger on Petitioner for his alleged conduct as opposed to R.P. for her conduct.** The State cites to People v. Jones<sup>1</sup> for the argument that R.P.'s mistake was irrelevant. (*See* SR 14). Petitioner's case is distinguishable from Jones, *supra*.

In Jones, four males, Lofton, Battice, Jones, and Salazar, were accused of sexually

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<sup>1</sup> 264 Ill. App. 3d 556, 566, 636 N.E.2d 604, 612 (Ill. Ct. App. 1993).

1 assaulting a high school girl. The victim had consensual intercourse with Battice, her  
2 boyfriend at the time, but was then assaulted by he and the three other defendants  
3 afterwards. Id. at 606-607. The defendants claimed the victim consented to the sexual  
4 encounter with all four of them. Id. at 606. Battice pleaded guilty to a lesser charge. Id.  
5 Lofton, a minor, was adjudged delinquent in a juvenile proceeding and placed on six  
6 months' probation. Id. Only Jones and Salazar proceeded to trial. Id.

7 The State, invoking the rape shield statute (Ill.Rev.Stat.1989, ch. 38, par. 115-7),  
8 moved in limine to exclude any evidence concerning the victim's sexual reputation or her  
9 prior sexual activity with anyone other than the defendants standing trial, Jones and  
10 Salazar. Id. In response, Jones informed the court that he had observed the victim engage  
11 in consensual sexual intercourse and oral copulation with Battice sometime between  
12 Christmas 1988 and January 24, 1989, the date of the incident at issue here. Id. at 605.  
13 Jones sought to admit this evidence through various avenues and/or for various reasons,  
14 one being that the prior sexual conduct demonstrated a motive to lie. Id. at 611. Jones  
15 argued that the victim feared her mother's reaction to her sexual experiences and that she  
16 was attempting to protect her boyfriend, Battice. Id. The trial court denied the motion.

17 On appeal, Jones attempted to analogize his case to People v. Gray 2, where the  
18 appellate court held that the defendant's confrontation rights superseded the State's  
19 interest in protecting the victim under the provisions of the rape shield statute and that  
20 therefore, the defendant should have been allowed to question the victim on her fear of  
21 being pregnant by another man, something that would have severely angered her  
22 mother. Jones, 636 N.E.2d at 611. In affirming the denial, the Appellate Court of Illinois  
23 stated as follows:

24 "The **feared pregnancy** in Gray provided the logical basis from which a  
25 trier of fact could reasonably infer that the victim invented the alleged  
26 sexual assault. That predicate is absent here. Jones does not allege that the

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27  
28 2 209 Ill.App.3d 407, 154 Ill.Dec. 219, 568 N.E.2d 219 (1991).

1 victim feared pregnancy; nor does he present **any other plausible reason**  
2 **to demonstrate why the victim suddenly feared her mother would learn**  
3 **of the group sexual encounter in the high school auditorium but not the**  
4 **one she had a month earlier with Battice.** More significant, nothing  
logically links the victim's prior instance of sexual conduct with the  
alleged motive to lie."

5 Id. at 612-13 (emphases added).  
6

7 The State's reliance on Jones is misplaced. In Jones, the defense theory that the  
8 victim's mother would be angry at the victim about anything was tenuous at best  
9 because **there was nothing to show that her mother knew about the group sexual**  
10 **encounter but for the victim making the accusation that she was sexually assaulted.** Id.  
11 at 612-13. Here, there is no question that R.P.'s mother had found out about her sexual  
12 activity—R.P. was pregnant and told her mother and then immediately accused  
13 Petitioner of sexually assaulting her in the past.

14 The second reason the State's reliance on Jones is misplaced is because the  
15 evidence Jones sought to admit was the actual sexual conduct of the victim. Here,  
16 Petitioner is arguing that his attorney was ineffective for failing to sanitize the sexual  
17 conduct of the victim in some way so that the jury would still hear that R.P. feared  
18 getting in trouble for a huge mistake she had made; wanted to divert her mother's anger  
19 away from her; thereby evincing the motive to lie. Therefore, Jones and the instant case  
20 are not analogous at all.

21 Petitioner's case is more analogous to Gray than to Jones. The important take  
22 away from Gray is that fearing a parent's "wrath" and disappointment for whatever  
23 reason, but especially pregnancy, constitutes a motive to lie about sexual assault.  
24 Jones, 636 N.E.2d at 611 (when distinguishing Jones from Gray stated, "[t]he trier of fact  
25 there [in Gray] could reasonably decide that the victim invented the sexual assault, given  
26 her fear of her mother's previously demonstrated wrath, which would only be inflamed  
27 by the pregnancy."").  
28

AA 001384

1                   **B. Petitioner’s Proposed Sanitization Does not Allude to R.P.’s Sexual**  
2                   **Conduct in Violation of NRS 50.090**

3           The State argues that Petitioner’s proposed sanitization offered in his  
4 Supplemental Memorandum would still violate NRS 50.090 because it alludes to her  
5 sexual conduct. (*See* SR 12). The State cites to Aberha v. State , Docket No. 73121 (Order  
6 of Affirmance) in support of this argument. *Id.* Petitioner’s case is distinguishable from  
7 Aberha, *supra*.

8           In Aberha, the defense sought to introduce a hotel bill from the Aria showing the  
9 victim had **purchased the romance package two days after the sexual assault, which**  
10 **included condoms** for the purpose of supporting the defense of consent. *Id.* at 7-8. The  
11 District Court precluded the defense from introducing the bill for two reasons: 1)  
12 although the purchase of the romance package was not sexual conduct per se, it blatantly  
13 alluded to and implied that the victim wanted to or did have sex with someone else  
14 using condoms two days after the rape and therefore must be lying about the rape, which  
15 is in violation of NRS 50.090; and 2) the purchase of a romance package **two days after**  
16 **the sexual assault** is irrelevant to show she consented to sex with the defendant **days**  
17 **earlier**. *Id.* at 8-9.

18           Petitioner’s proffered sanitization does not even come close to alluding to R.P.’s  
19 sexual conduct in the way the purchase of a romance package that included condoms  
20 does. The State claims that the reason the proffered sanitization alludes to R.P.’s sexual  
21 conduct and violates NRS 50.090 is because “[i]t is difficult to imagine a mistake—other  
22 than pregnancy—that a teenage girl could make which would ‘negatively impact the rest  
23 of her life’ in the way mentioned by Petitioner.” (*See* SA 13).

24           First, the proffered sanitization is a work in progress. Petitioner is not arguing  
25 that anything short of the word-for-word sanitization he proposed amounts to ineffective  
26 assistance of counsel. Arguably, defense counsel, the State and the Court would come to  
27 a final compromise that addresses all parties’ concerns.

28           Second, teenage girls can commit a myriad of serious mistakes that do not involve

**AA 001385**

1 sexual conduct. The following examples are all mistakes a teenage girl could make that  
2 would negatively affect her future:

- 3 • Failing a class, thereby precluding her from graduating on time or getting into the
- 4 college of her choice.
- 5 • Skipping school so many times that she will not be able to graduate.
- 6 • Dropping out of school.
- 7 • Getting kicked off a sports team resulting in the loss of a college scholarship.
- 8 • Dating “the wrong kind of guy,” which leads to many other negative behaviors
- 9 • Rushing into marriage/love and deciding to not go to college.
- 10 • Getting a D.U.I.
- 11 • Doing drugs, smoking and/or drinking.
- 12 • Bullying or cyber bullying another teenager.
- 13 • Throwing a party when parents are out of town
- 14 • Social media statements that lead to college rejection.
- 15 • Injuring friends/family with reckless driving.
- 16 • Caught drinking/drugs while at school/school function leading to placement in
- 17 alternative school.
- 18 • Getting piercing/tattoos; getting boy’s name tattooed on her body; getting and
- 19 home piercing or tattoo leading to serious infection or disease, such as, Hepatitis
- 20 or HIV.
- 21 • Being with a group of kids who committed a crime or serious school infraction
- 22 resulting in suspension or expulsion.
- 23 • Lying about whereabouts and/or staying out past curfew and/or putting herself in
- 24 dangerous situations.
- 25 • Driving without a license or riding as a passenger in a car being driving with
- 26 someone without a license.

27 These are just *some* of the serious and potentially life altering mistakes a teenage  
28 girl can make. Therefore, Petitioner’s proposed sanitization, or a variation thereof, would  
not improperly allude to R.P.’s sexual conduct in violation of NRS 50.090.

### 23 C. Counsel’s Attempt at Discrediting R.P. Fell Short of Presenting a Motive 24 for her to Lie

25 An otherwise valid State evidentiary law runs counter to the Sixth Amendment  
26 when it does not permit the defendant to show bias, prejudice or motive which may  
27 affect the witnesses' testimony. Davis v. Alaska, 415 U.S. 308, 316, 94 S.Ct. 1105, 1110, 39  
28 L.Ed.2d 347, 353-54 (1974) *cited by* Gray, 209 Ill.App.3d 407, 154 Ill.Dec. 219, 568 N.E.2d

AA 001386

1 219. This ensures that the defendant will be able to confront his accuser "where the  
2 confrontation is both relevant and based on a showing of bias, prejudice or motive."  
3 People v. Sandoval 135 Ill.2d 159, 174-75, 142 Ill.Dec. 135, 142, 552 N.E.2d 726, 733 (1990)  
4 *citing* Davis, *supra*. Furthermore, the Fourteenth Amendment Due Process guarantees "an  
5 accused the right to introduce into evidence any testimony or documentation which  
6 would tend to prove the defendant's theory of the case." Viperman v. State, 96 Nev. 592,  
7 596 (1980) (citations omitted); Crane v. Kentucky, 476 U.S. 683, 690 (1986).

8       Attempting to discredit R.P. by bringing out inconsistencies in her statements does  
9 not preclude defense counsel from also offering a motive for why she would have lied,  
10 nor does it take the place of such an offering. The former establishes the inconsistencies  
11 and the later establishes **the reason for the inconsistencies**—that she was lying to  
12 minimize the anger directed at her by her mother as opposed to innocuously failing to  
13 remember things correctly every time she was questioned. **In fact, presenting a motive**  
14 **to lie answers the very concern at last one juror had**, which was, "I don't see why  
15 anybody would like about something like that...." (*See* Exhibit 3 of Petitioner's  
16 Supplemental Memorandum at 92-93).

17       Ultimately the District Court understood the relevance and importance of  
18 presenting R.P.'s motive to lie in the defense case-in-chief. (*See* Transcript of Day 1 of  
19 Trial ("T1") at 28-42). Based upon this understanding, the Court left the door wide open  
20 for defense counsel to come up with a way to sanitize R.P.'s pregnancy so as to still be  
21 able to present to the jury a motive for her to lie. (*See* T1 at 42-50). Instead of making any  
22 type of attempt to do so, defense counsel simply threw their hands up in surrender and  
23 offered nothing. (*See* T1 at 49-63). Given the fact that R.P.'s accusations and testimony  
24 comprised the only evidence of most of the crimes Petitioner was convicted of, counsel's  
25 failure to sanitize R.P.'s pregnancy and confront her regarding her motive to lie amounts  
26 to ineffective assistance of counsel.

27       While the State claims this was a strategic decision and virtually unchallengeable  
28

AA 001387

1 3, the record clearly reflects the opposite. Counsel thought the presentation of a motive  
2 for R.P. to lie was imperative to the defense of “better him than me” and even sought a  
3 stay to file a petition for writ of mandamus in the Supreme Court of Nevada when this  
4 Court would not admit R.P.’s pregnancy. (See T1 at 49-63). Then when offered the  
5 opportunity to sanitize R.P.’s pregnancy so as to still be able to present this very  
6 important motive to the jury, counsel’s response was, “...there’s nothing else that really  
7 conveys the message of what we’re talking about.” (See T1 at 51). While Petitioner  
8 appreciates how fiercely counsel advocated for the initial argument that the only way to  
9 present his defense was by admitting the pregnancy, once it was clear that this was not  
10 going to happen, counsel should have explored other options. Saying “there is no way to  
11 do this” when there is, in fact, several ways, is not a strategic decision—it is ineffective  
12 assistance of counsel. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064; Kirksey, 112 Nev. at  
13 980, 923 P.2d at 1102.

### 14 **III. REQUEST FOR EVIDENTIARY HEARING PURSUANT TO NRS 34.770**

15 The State argues that Petitioner is not entitled to an evidentiary hearing pursuant  
16 to NRS 34.770 because the claims of ineffective assistance of counsel involve either 1)  
17 requests that counsel take steps that ultimately would have been futile and 2)  
18 unchallengeable strategic decisions. (See SR 19). First, counsel’s requests would not have  
19 been futile. With respect to Juror No. 12, if counsel failed at attempting to excuse her for  
20 cause, he could have used a peremptory challenge on her. With respect to sanitizing  
21 R.P.’s pregnancy, this Court gave counsel the option to do so. Therefore, to argue that an  
22 attempt at sanitizing her pregnancy would be futile is belied by the record.

23 Second, with respect to counsel’s decisions being strategic in nature, the State is  
24 attempting to improperly expand the record. There is no case law or statute that makes  
25 any decision *per se strategic* and there is nothing in the record indicating why defense  
26 counsel made the decisions they made. The only way to determine if a decision made by  
27

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28 3 (See SR 16).

1 counsel was strategic in nature is to expand the record via an evidentiary hearing.  
2 Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46  
3 P.3d 1228, 1231 (2002). Therefore, Petitioner is entitled to an evidentiary hearing  
4 pursuant NRS 34.770.

5  
6 Dated this 6<sup>th</sup> day of March, 2019.

7 /s/ Jean Schwartzer

8 **JEAN J. SCHWARTZER, ESQ.**

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17 Attorney for Petitioner

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**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED by the undersigned that 6<sup>th</sup> day of March, 2019, I served a true and correct copy of the foregoing **REPLY TO STATE'S RESPONSE TO SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)** on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

**VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada.

**VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

**BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

**BY E-MAIL:** by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

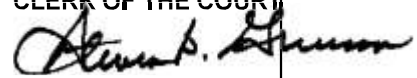
*/s/ Jean Schwartz*  
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**AA 001390**

## SERVICE LIST

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| CLARK COUNTY DISTRICT<br>ATTORNEY'S OFFICE<br>200 E. LEWIS AVENUE<br>LAS VEGAS, NEVADA 89101<br><a href="mailto:pdmotions@clarkcountyda.com">pdmotions@clarkcountyda.com</a> | State of Nevada        | <input type="checkbox"/> Personal<br>service<br><input checked="" type="checkbox"/> Email service<br><input type="checkbox"/> Fax service<br><input type="checkbox"/> Mail service |
| GUILLERMO RENTERIA-NOVOA<br>INMATE NO. 1092343<br>LOVELOCK CORRECTIONAL CENTER<br>1200 PRISON ROAD<br>LOVELOCK, NEVADA 89419   |                        | <input type="checkbox"/> Personal<br>service<br><input type="checkbox"/> Email service<br><input type="checkbox"/> Fax service<br><input checked="" type="checkbox"/> Mail service |

AA 001391



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|                           |   |                        |
|---------------------------|---|------------------------|
| THE STATE OF NEVADA,      | ) | CASE NO. C-10-268285-1 |
| Plaintiff,                | ) | DEPT. NO. XX           |
| vs.                       | ) |                        |
| GUILLERMO RENTERIA-NOVOA, | ) |                        |
| Defendant.                | ) |                        |

BEFORE THE HONORABLE ERIC JOHNSON, DISTRICT COURT JUDGE

FRIDAY, DECEMBER 13, 2019

**RECORDER'S TRANSCRIPT OF HEARING:**

**EVIDENTIARY HEARING**

APPEARANCES:

For the State: MICHELLE FLECK  
Chief Deputy District Attorney

For the Defendant: JEAN J. SCHWARTZER, ESQ.

Also Present with Defendant: Alicia Herrera Spanish Interpreter

RECORDED BY: ANGIE CALVILLO, COURT RECORDER

AA 001392

1 Las Vegas, Nevada; Friday, December 13, 2019

2 [Hearing commenced at 9:21 a.m.]

3  
4 THE COURT: State of Nevada versus Guillermo Renteria-  
5 Novoa, Case No. C268285. Counsel, please note your appearances for  
6 the record.

7 MS. SCHWARTZER: Jean Schwartzer for the Petitioner.

8 MS. FLECK: Good morning. Michelle Fleck for the State.

9 THE COURT: Okay, we're on for the evidentiary --

10 THE RECORDER: Your Honor, we have an Interpreter.

11 THE COURT: Oh, the Interpreter, that's right, sorry.

12 THE INTERPRETER: Alicia Herrera, Certified Spanish  
13 Interpreter.

14 THE COURT: Okay. All right, record reflect the presence of  
15 the defendant. We're on for the evidentiary hearing on the defendant's  
16 petition for writ of habeas corpus. Are we ready to get going?

17 MS. SCHWARTZER: Yes, Your Honor.

18 THE COURT: All right, call your first witness.

19 MS. SCHWARTZER: Mr. Feliciano, Mike Feliciano. Michael  
20 Feliciano.

21 THE WITNESS: It's just Mike.

22 MS. SCHWARTZER: Mike.

23 THE COURT: All right. I'm sure you know the procedure but  
24 stay standing for just a second while our Clerk over here swears you in.

25 **MIKE FELICIANO**

**AA 001393**

1 [having been called as a witness and being first duly sworn, testified as  
2 follows:]

3 THE CLERK: Please be seated. Please state your name and  
4 spell your first and last name for the record.

5 THE WITNESS: Mike Feliciano, M-I-K-E-F-E-L-I-C-I-A-N-O.

6 THE COURT: Okay, go ahead.

7 **DIRECT EXAMINATION**

8 BY MS. SCHWARTZER:

9 Q Good morning.

10 A Good morning.

11 Q Do you mind if I call you Mike?

12 A Sure.

13 Q Okay, and you can call me Jean. So what do you do for a  
14 living?

15 A I am an attorney.

16 Q And what kind of law do you practice?

17 A Criminal Law, Clark County Public Defender's Office, Sexual  
18 Assault Team.

19 Q Okay. And do you know Mr. Renteria-Novoa?

20 A I do. I was his lead trial attorney at his trial in 2012 or '13, I  
21 believe.

22 Q Okay. And without going into all of the counts, I know there  
23 were a lot. What was the nature of the case against Mr. Renteria?

24 A It was charges of sexual assault and associated lewdness's  
25 with his girlfriend or partner's daughter.

1 Q Okay. And what were the age range that these crimes were  
2 alleged to have been committed with respect to the victim?

3 A I know there were counts that were under 14, so I believe 12  
4 or 13. It started with the allegations and it went up to, I believe, 16  
5 because there were charges of just sex assault without the minor  
6 enhancement.

7 Q Okay. So then there would be some under 14 charges that  
8 occurred when she was under 14; some charges that were for 14 to  
9 16 -- 14 to under 16, correct?

10 A Yes.

11 Q And then some that were 16 and older?

12 A Correct.

13 Q Correct, okay. And is consent a defense to any of those?

14 A Well under the 14, no. There's -- it's arguable if you can use  
15 consent on the -- on the 16 definitely; consent would be an argument.  
16 It's arguable if under 16 or under 14; sex assault would be -- you can  
17 consent to it. Most people would say, no. I think the law would say, no.  
18 But we argue that -- you know, sometimes we do argue that consent  
19 applies; as to lewdness, no.

20 Q Okay. What were some of the hurdles you had to get over  
21 with this case as far as the evidence that you knew the State had prior to  
22 trial?

23 A Well the worst piece of evidence, I think, we had -- well there  
24 were two. There were -- it was Mr. Guillermo's statement to the police;  
25 which I believe we've filed the motion to suppress on -- where he

1 admitted that he had done things with the child. Additionally, there were  
2 some photos of a text messages that Mr. Renteria-Novoa sent to the  
3 victim, and they were photos of her underwear. And saying just kind of  
4 like flirting photos and telling her to answer the phone and stuff like that.

5 Q Okay. Aside from -- and we're talking pretrial. Was there  
6 any -- and aside from his statement, Mr. Renteria's statement and the  
7 statement that the victim gave, was there any outside corroboration?

8 A There were -- I don't believe there were any findings, medical  
9 findings. But, yeah, it was basically her statement and his statement.  
10 And I guess looking at them both, they kind of looked very similar; so  
11 that's usually a bad sign for us.

12 Q But he didn't admit to every single thing that he was charged  
13 with, correct? There was --

14 A No. No, no, no.

15 Q Okay.

16 A No.

17 Q So it was basically he said/she said?

18 A Yes.

19 Q Okay. So based upon all of that, what theory of defense did  
20 you come up with?

21 A We came up with the defense that the victim made up the  
22 allegations because she was getting in trouble. And that -- I mean,  
23 basically, she was okay with that that it was consensual.

24 Q Okay. So it was -- and I'm using your words from your closing  
25 statements and some of the arguments that occurred prior to trial, better

1 him than me?

2 A Yes, better --

3 Q Does that accurately reflect?

4 A Yes, yes.

5 Q Okay. And so -- can you go into a little bit more detail about  
6 what that means?

7 A So basically what we -- what we're -- what we presented was  
8 that she made up the allegations to avoid getting in trouble. And her -- I  
9 remember correctly, her mother and Mr. Novoa weren't super serious.  
10 They were, kind of, on and off. And it was not a big deal to her if he just  
11 was out of the picture, then she could get -- you know, she would get  
12 sympathy and things like that and not be in trouble.

13 Q Okay. And she would be in trouble for?

14 A Well she was pregnant at the time of the allegation, which we  
15 tried to present. But we were not allowed to present, and we argued  
16 that on the first day of trial.

17 Q Okay. And just to clarify, Mr. Renteria was not the father of  
18 that child?

19 A I don't believe so. There's no evidence that suggest he was.

20 Q And the victim never claims that it was?

21 A No, no, no, she claimed it was her boyfriend's.

22 Q Okay. So the pregnancy was integral to the theory of your  
23 defense?

24 A Yes.

25 Q Okay, did you file any pretrial motion regarding that?



1           A     We did not.

2           Q     Okay, so when did you first present that issue to the Court?

3           A     We -- there were discussion with myself and Ms. Fleck, and  
4 we ended up arguing at the first day of trial. I -- we went back and forth.  
5 Judge Tao asked us a bunch of times, you know, how is this relevant?  
6 How is it not rape shield? We gave our arguments, and we went on and  
7 on and on. And I read the pages yesterday and he said, no, this is rape  
8 shield, and we were not allowed to present that.

9           Q     Okay, but it was integral to your theory of why she would lie?

10          A     I mean at the time, yes. It's not what we ultimately presented  
11 because we weren't allowed to, but that's what we wanted to go with.

12          Q     Okay. When -- did you ever have discussions with Mr.  
13 Renteria about this theory?

14          A     Yes.

15          Q     How -- at what point in the pretrial stage?

16          A     About -- presenting that she was pregnant?

17          Q     Yes.

18          A     Well -- so I'm going to get into stuff he said to me, is that -- is  
19 that what we're doing?

20                 THE COURT: If he's going to go down there, I mean, I  
21 assumed you've talked about this with your client. But --

22                 THE WITNESS: I did. I mean I can just -- yeah, we did speak  
23 about it.

24                 BY MS. SCHWARTZER:

25          Q     I just want to know when?

1           A     We talked -- I mean, that --

2           Q     When you -- like at what -- how many months or weeks prior  
3 to trial did you discuss presenting that as a defense?

4           A     Oh, that's something we talked about immediately because  
5 that's something that was very important to him.

6           Q     Okay, okay. So during the discussions and the arguments  
7 rather; prior to trial when you were attempting to get in evidence of the  
8 pregnancy and Judge Tao was saying, no, it's a violation of Rape Shield  
9 Law. Did he offer any kind of compromise?

10          A     Judge Tao?

11          Q     Yes.

12          A     He said that we could fashion some sort of -- something that's  
13 not sexual; something that didn't involve pregnancy and talk about some  
14 sort of, like, medical issue that the girl was having, and we declined that  
15 option.

16          Q     Okay. Did you -- and who's your co-counsel?

17          A     Amy Porray.

18          Q     Okay. And did you and Ms. Porray talk about -- or have a  
19 chance to talk about possibly coming up with some way to sanitize it that  
20 didn't involve simply a medical reason? Because I think, as you stated  
21 in the argument, a medical reason is not -- having a medical condition is  
22 not something a teenager would get in trouble for.

23          A     Yeah, so basically we talked about it. There was nothing  
24 really that we could come up with. A medical condition doesn't really fit  
25 this, it didn't make much sense. I think it raises more questions and

1 answers. And there was nothing that we could think of that would  
2 provide the force of: I'm pregnant; you know, please take care of me; I  
3 don't want to get in trouble and, you know, pin it all on him.

4 Q Okay. What about coming up with sort of a nebulous  
5 explanation of -- and this would be a working progress, obviously. And I  
6 did put this in Mr. Renteria's petition, but it doesn't have to be taken  
7 word for word. What about coming up with something similar to, you  
8 know, the victim had done something that would've disappointed her  
9 parents; that they'd be real angry about and that would have affected  
10 her future and also affected other people, but left the pregnancy portion  
11 out so that it sanitized and gets across your point to the jury that she had  
12 a reason for, sort of, diverting the blame onto somebody else or  
13 attention or anger, but still doesn't violate the Rape Shield Law?

14 A Well I believe if we would've done -- I don't know if we  
15 would've -- I don't know exactly how much we would've been allowed to  
16 present; what the sanitation would've been because we didn't get too far  
17 into it. But I was concerned that if we present something like that, that  
18 we would've been waiving our issue on appeal of whether this is rape  
19 shield or not. If we're accepting some sort of stipulation as to something  
20 else, we thought that the rape shield issue alone was a good appeal  
21 issue. So we didn't want to -- we thought that was a really good issue.  
22 Obviously, the Supreme Court didn't think so, but that was one of our  
23 best appeal issues in my estimation.

24 Q Do you think that you could have presented that sanitized  
25 version because that's all you were offered by the trial judge? And still