

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 V**

JEAN J. SCHWARTZER, ESQ
Nevada Bar No. 11223
Law Office of Jean J. Schwartzer
411 E. Bonneville Avenue
Suite 360
Las Vegas, Nevada 89101
(702) 979-9941
Attorney for Appellant

STEVEN B. WOLFSON, ESQ.
Nevada Bar No. 1565
Clark County District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2500
Attorney for Respondent

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1 Q Okay. So you didn't see anything wrong with
2 their relationship when you saw them together?

3 A No, never.

4 Q Okay. So you would have thought --

5 MS. FELICIANO: Court's indulgence. Let me --

6 BY MS. FELICIANO:

7 Q Once Guillermo contacted you and said have
8 Roxana call me, you never told Roxana's mom, Rosa, about
9 Guillermo trying to contact her?

10 A No, because I actually spoke to her the
11 following day. That's when he told me that he was kind of
12 threatening her and that she showed me the messages, or one
13 message.

14 Q But you didn't call her mom, Rosa, right after
15 that to tell her?

16 A No, I didn't call her.

17 MS. FELICIANO: Court's indulgence. Nothing further.

18 THE COURT: Any redirect?

19 MS. FLECK: Nothing further from the State. Thank
20 you.

21 THE COURT: All right. Is the witness excused? All
22 right. Thank you very much --

23 THE WITNESS: Okay.

24 THE COURT: -- ma'am, for your testimony, and you're
25 free to go.

1 State, your next witness.

2 MR. GRAHAM: Janet Rodriguez.

3 THE COURT: Does she also need the interpreter, or
4 not?

5 MR. GRAHAM: She will.

6 THE COURT: Okay. And you know, one thing I forgot
7 to do. Mr. Interpreter, you were assisting the last witness,
8 Maritza. What is your name for the record?

9 THE INTERPRETER: It's Manuel Cavillo.

10 THE COURT: Thank you.

11 THE MARSHAL: It's going to be a minute, sir. She
12 had to go feed the meter.

13 THE COURT: Is there another witness?

14 MS. FLECK: Oh, she's got to feed the meter. Okay.
15 Then let's call somebody else.

16 Your Honor?

17 THE COURT: Hang on. Randy's coming.

18 THE MARSHAL: Yeah, we have Jeimi.

19 MS. FLECK: Okay. Court's indulgence.

20 (Pause in proceedings)

21 THE COURT: Does Jeimi need the interpreter or not?

22 MR. GRAHAM: No.

23 MS. FLECK: No, she doesn't. You know what, let's --
24 sorry. Let's call Rosa and then we can use the interpreter;
25 and then in the meantime, we can make sure that the audio is

1 set up for the 9-1-1.

2 THE COURT: Okay. So we're getting Rosa right now?

3 MS. FLECK: Yes, Rosa Ruiz.

4 THE COURT: All right. Randy, let's get Rosa then.

5 And Mr. Interpreter, I think you need to come back up here,
6 all right? Thanks.

7 MS. FLECK: Sorry.

8 THE INTERPRETER: That's fine.

9 MS. FLECK: I don't want you to go away.

10 THE INTERPRETER: Stretch my legs here.

11 THE CLERK: Please raise your right hand.

12 ROSA MARIA RODRIGUEZ-RUIZ, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please
14 state your full name, spelling your first and last name for
15 the record.

16 THE WITNESS: Rosa Maria Ruiz.

17 THE INTERPRETER: Rosa Maria Rodriguez-Ruiz, I'm
18 sorry.

19 THE COURT: Can she spell that for the record?

20 THE WITNESS: Rosa, R-O-S-A, Maria, M-A-R-I-A,
21 Rodriguez, R-O-D-R-I-G-U-E-Z, and Ruiz, R-U-I-Z.

22 THE COURT: All right. You may proceed.

23 MS. FLECK: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. FLECK:

1 Q Okay. Rosa, I'm going to ask you the same thing
2 I asked your daughter, just to speak up.

3 A Okay.

4 Q Okay. Thank you. Rosa, when did you first move
5 to Las Vegas?

6 A February of 2002, about ten years ago.

7 Q And who did you move to Las Vegas with?

8 A When I moved here, I moved in here with a sister
9 of mine.

10 Q And who did you move with, who did you come here
11 with?

12 A Both of my daughters.

13 Q You have an older daughter. What's her name?

14 A Perla Crystal [phonetic] Perez.

15 Q And what's your younger daughter's name?

16 A Roxana Pirelli [phonetic] Perez.

17 Q Where had you come from?

18 A Mexico, Tabasco.

19 Q You first moved in with your sister Janet.
20 After that, did you and the girls get your own place?

21 A Yes.

22 Q And where was that?

23 A With a male friend, then we lived with a female
24 friend at -- by Maryland and Flamingo, Apartment Libertwo,
25 Flamingo and Maryland.

1 Q Okay. And that's the Livertivo Apartments?

2 A Yes.

3 Q While you were at the Livertivo Apartments, did
4 you meet someone by the name of Guillermo Renteria-Novoa?

5 A Yes. He was living in the upstairs studio and I
6 lived downstairs.

7 Q Do you -- do you see him in court today?

8 A I'm sorry?

9 Q Do you see him in the courtroom today?

10 A I'm not able to see. I don't know if he's here.
11 Yes, he's wearing pink.

12 Q Okay. Thank you.

13 MS. FLECK: Let the record reflect identification of
14 the defendant.

15 A Person that's wearing pink.

16 THE COURT: Hang on a second 'cause she added
17 something while you were -- you were talking.

18 Can you repeat, Mr. --

19 THE INTERPRETER: The person that's wearing pink.

20 THE COURT: All right. So the record will reflect
21 that Ms. Ruiz identified the defendant.

22 THE WITNESS: Yes.

23 BY MS. FLECK:

24 Q When you first met the defendant, did the two of
25 you start a friendship?

1 A Yes, in the beginning, yes. And afterwards, we
2 started a dating relationship.

3 Q Okay. And I'm just going to ask Rosa that,
4 again, you speak up. I know you're using an interpreter, but
5 we need to be able to hear your voice also?

6 A Okay.

7 Q Okay? So you started eventually a dating
8 relationship?

9 A Yes. Some months afterwards. You know, we were
10 -- it's just normal. I mean, we were boyfriend and
11 girlfriend.

12 Q Okay. Once you started dating, did you move
13 from Livertivo to the University Park Apartments?

14 A Yes.

15 Q And did you first live in a two-bedroom at that
16 complex?

17 A Yes.

18 Q Who moved into that complex with you -- or that
19 apartment with you?

20 A The two-bedroom one?

21 Q Yes.

22 A The two girls, me and -- and him.

23 Q And him being the defendant?

24 A Yes.

25 Q Did your brother, Manuel and his son, Yahir,

1 also live there for a time?

2 A Yes, but that was afterwards that they came to
3 live there.

4 Q Okay. After the two-bedroom University, did you
5 move into a three-bedroom University?

6 A Yes.

7 Q And did the defendant live there also with you?

8 A Yes.

9 Q Okay. And after that, did you move to Andover
10 Park Apartments -- or Andover Place Apartments?

11 A Andover Place, yes.

12 Q Now, did the defendant move to that apartment
13 with you?

14 A Yes, he was also living with us there because he
15 would come -- you know, every day he would come by and day
16 after day he was coming.

17 Q Okay. But while he was living -- actually
18 living with you at University Park, once you moved to Andover,
19 he was just visiting? I mean, he would come over?

20 A When we moved to Andover, he would come and
21 visit and visit, and little by little he would start staying
22 over and staying over because he had some things at Andover.

23 Q Okay. So again, when you moved to Andover, he
24 did not move in with you?

25 A No. No, my contract had my older daughter's

1 name and me -- and mine.

2 Q Now, why didn't the defendant move to Andover
3 with you?

4 A Because I had decided to leave him already. We
5 had separated already because we had some problems or some
6 issues. He was, you know, having some issues with an
7 ex-boyfriend that I had.

8 Q Okay. So you broke up and once you moved to
9 Andover, he was still coming around a lot?

10 A Yes.

11 Q And you eventually let him move into Andover?

12 A Yes. He stayed for some months, but you know,
13 the same obsession kept on going.

14 Q Okay.

15 A So then I decided no more, no more, and that's
16 when I decided to move.

17 Q All right. So you live at Andover for a certain
18 amount of time and then you move to Tamarus?

19 A Yeah.

20 Q When you moved to Tamarus, did the defendant
21 move with you?

22 A No, but he would visit.

23 Q Would he visit as often as he did at Andover or
24 less often?

25 A At Tamarus it was a little bit less, and I had

1 told him -- because I had told him that I was seeing someone
2 else. I'm not sure. I don't know.

3 Q Okay. So you were seeing someone else but he
4 was still coming over?

5 A I did that one because I just wanted to, you
6 know, get rid of him. Yeah, he wouldn't leave me alone.

7 Q Okay. And had you told him that you didn't want
8 to see him anymore?

9 A Many times. I told him that I was going to call
10 the police and he would laugh at me. He would laugh at me.
11 He would tell me that they weren't going to believe me --

12 Q Did you --

13 A -- because I was an immigrant.

14 Q Okay. After you live in Tamarus, you move to
15 Southern Cove; is that correct?

16 A With a friend.

17 Q And also Roxana?

18 A Yeah. I've always taken my daughter everywhere
19 I've gone.

20 Q When you lived at Southern Cove, did the
21 defendant continue to come to visit?

22 A Yes.

23 Q Through that time, were there also days or times
24 that you would tell him you didn't want him to come over?

25 A He would ask me why couldn't we be friends and I

1 would say no, and he would look for an excuse. You know, I
2 even showed him a picture once that a friend of his had taken
3 of him with his other girlfriend and he would say that -- he
4 would lie to me and lie to her.

5 Q Okay.

6 A He would always laugh -- laugh at me.

7 Q Okay. So you said that there were times that he
8 would ask if you can just be friends. Were there times
9 throughout the years that you would try to be friendly with
10 him?

11 A Well, because he would demonstrate and say
12 sometimes, I mean, come on, is it all over, can we still be
13 friends; and you know, sometimes he would come over and would
14 be cooking, I would let him come over, and he would say can we
15 still be friends?

16 Q Okay. Now, so just we're -- so yes, there were
17 times, then through the years that you would be friendly with
18 him?

19 A Yes, because I would actually think that he was
20 behaving as a friend, even when he had a new wife.

21 Q Okay.

22 A And I would tell him that he was disrespectful
23 with his wife --

24 Q Okay.

25 A -- and us, and he would always just laugh at us.

1 Q Okay. Rosa, I know it's upsetting, okay? Just
2 try to listen to my question, okay? Take a deep breath, try
3 to listen to my question, and then answer just only what I'm
4 asking. Okay?

5 A Okay.

6 Q Okay. So after you lived at Southern Cove,
7 where did you move to?

8 A Riverbend Apartments.

9 Q Riverbend? Yes?

10 A Yes.

11 Q And like the prior apartments, would the
12 defendant often come to Riverbend also?

13 A Yes.

14 Q At some point in December of 2009, do you have a
15 conversation with your sister Janet where you learned --

16 A No. On the 17th, yes, but before, no.

17 Q At some point in December, do you learn from
18 Janet that Roxana and the defendant have -- or that Roxana has
19 claimed that the defendant has been touching her?

20 A Yes.

21 Q And where were you --

22 A December 17th, and that was the worst.

23 Q Where were you when you got that information?

24 A At my job at Subway.

25 Q After you learned from Janet what was going on,

1 did you and your family call the police?

2 A Yes.

3 Q Did you then have an opportunity to speak with
4 an officer that evening?

5 A The police did come, yes, and my daughter --
6 with the police, they had me write something, my daughter as
7 well. With the police, no one else. My daughter --

8 Q Okay.

9 A -- wrote a letter.

10 Q Okay. And then after that day, did you ever
11 have any more contact with the defendant?

12 A No. Just one day he went to visit or -- no, no
13 more contact.

14 Q Okay.

15 A Over the phone.

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

17 THE COURT: All right. Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. FELICIANO:

20 Q Good afternoon, ma'am.

21 A Good afternoon.

22 Q So you met Guillermo in 2003; does that sound
23 right?

24 A Yes.

25 Q And he was around your kids a lot?

1 A Well, yes, he was living with us.

2 Q So he was around Roxana a lot?

3 A Yes.

4 Q And Perla, he was around Perla a lot as well?

5 A Yes.

6 Q So during that time, though, you never

7 suspected --

8 A Well, we lived together.

9 Q During that time, though, you never suspected
10 anything was going on between Roxana and Guillermo?

11 A I honestly never saw anything, never.

12 Q So I just want to get -- I want to talk about
13 the places that you lived and just clear up a few things. The
14 first University Park Apartments, that was a two-bedroom?

15 A The first one was, yes, two-bedroom.

16 Q All right. And who lived there?

17 A Now?

18 Q No, who lived there when you lived there, I'm
19 sorry?

20 A Him, my daughters, you know, myself, and
21 afterwards, my brother came with his kid. And one day or a
22 couple of days there was a friend of his that asked to stay
23 over. He was moving or something. That was it. That was it.
24 No one else.

25 Q So the friend didn't live there, he just visited

1 for a couple days?

2 A Yes.

3 Q Okay. So the second apartment, that's the
4 three-bedroom, right?

5 A Yes.

6 Q So who lived there?

7 A My brothers lived there, my family -- I mean, my
8 family, my daughters, him, my brother, his family.

9 Q When you say "his family," who are you talking
10 about?

11 A His son and his wife.

12 Q What are their names?

13 A His son is Yahir and Rosa.

14 Q That's his daughter?

15 A His wife, my brother's wife; and my
16 sister-in-law's' family also came over.

17 Q All right. And who was that? What are their
18 names?

19 A It was my sister-in-law's sister, and I can't
20 remember her name, Marleni [phonetic].

21 Q And who was that?

22 A My sister-in-law's sister.

23 Q Okay.

24 A But then they left -- you know, then I moved to
25 a different place with my daughters. I mean, I didn't say

1 anything after that.

2 Q That's when you moved to the Andover -- Andover
3 Place?

4 A Yes.

5 Q Now, that was -- was that a one-bedroom?

6 A Yes.

7 Q And who lived there?

8 A My two daughters, myself, and then he came over.

9 Q So but he didn't live there, he just -- you said
10 he visited a lot?

11 A No. Yes.

12 Q All right. And did anybody else live there?
13 Did Maritza ever live there?

14 A Oh, yes, Maritza after some days that we -- but
15 since he moved, Maritza moved in with us over there at
16 Tamarus.

17 Q And Tamarus, that was how many bedrooms?

18 A Two.

19 Q And that was you, your daughter and Maritza?

20 A Yes.

21 Q Nobody else, right?

22 A Roxana and -- no. Maritza and -- and not him.

23 Q So -- and then Southern Cove, that was a
24 two-bedroom, right?

25 A Southern -- yes, two bedroom, two -- two

1 bathroom.

2 Q And you lived there with Roxana and a friend?

3 A Yes.

4 Q And what was the friend's name?

5 A Maria Charboy -- Chargoy [phonetic].

6 Q And then you moved to Riverbend?

7 A Riverbend.

8 Q And who lived there?

9 A Roxana, me and a friend that came afterwards,
10 later.

11 Q And what was the friend's name?

12 A Lupe, Guadalupe. But that was later, later on.

13 Q Ma'am, you love your daughter, right?

14 A Yes. You know, she's my baby, my love, my
15 adoration.

16 Q You want to protect her?

17 A I don't want them to hurt my daughter.

18 Q So if you suspected somebody was hurting your
19 daughter, you would do something about it, right?

20 A I didn't suspect anything. I found out on this
21 date. I mean, if I would have seen it, I would have done
22 everything that I possibly could have done. Everything that's
23 happened is because of the same thing. I don't want her to be
24 hurt anymore because of that man and it would be injustice.
25 He wouldn't have done that if he actually loved me how he said

1 he loved me.

2 Q Okay. So since you didn't suspect -- since you
3 didn't suspect anything, there was never any reason for you to
4 take any action, right?

5 A Yes.

6 Q Thank you, ma'am.

7 A But if I would have discovered him, if I would
8 have seen him, I would have done everything.

9 Q Thank you.

10 THE COURT: Any redirect?

11 MS. FLECK: Nothing further from the State, Your
12 Honor.

13 THE COURT: All right. Is the witness excused?

14 MS. FLECK: Yes.

15 THE COURT: All right. Ma'am, thank you for your
16 testimony. You're free to go. And if you want, you can take
17 the Kleenex with you.

18 All right. Can counsel approach for just ten seconds
19 to talk about scheduling?

20 (Bench conference)

21 THE COURT: Do you guys have a quick witness or not?

22 MS. FLECK: We have one really quick, Jeimi. It's
23 just to get the 9-1-1 call in 'cause she can't come tomorrow.
24 The 9-1-1 call is seven minutes long.

25 THE COURT: You were planning on playing it with

1 Jeimi?

2 MS. FLECK: Yeah.

3 THE COURT: Do we need a witness or are you guys
4 going to stipulate to the call or not? I mean, it's not
5 authenticity of it at issue?

6 MR. FELICIANO: Yeah, I still want to question her.

7 MS. FLECK: Well, she can't come tomorrow.

8 THE COURT: All right. Well --

9 MS. FLECK: I mean, she's been out of work. We got
10 her out of work like --

11 THE COURT: Jeimi's who? She's the person who
12 called --

13 MS. FLECK: The cousin that called --

14 THE COURT: -- 9-1-1?

15 MS. FLECK: -- yeah.

16 THE COURT: All right. Well, I'm going to -- is
17 there any way -- I mean, shoot. Well, we got ten minutes.
18 Let's try to squeeze in as far as we can get.

19 MR. FELICIANO: Can we --

20 THE COURT: She can't come tomorrow.

21 MR. FELICIANO: Can we maybe question her, then play
22 the audio tomorrow?

23 THE COURT: Unless you have an objection of doing
24 that.

25 MR. FELICIANO: Do you have a lot of questions for

1 her?

2 MS. FLECK: No.

3 THE COURT: All right. Let's get her in here then.

4 MS. FLECK: Okay.

5 MR. FELICIANO: We can do the direct and cross and
6 play it tomorrow.

7 THE COURT: Okay.

8 MS. FLECK: That's good.

9 THE COURT: What's her name?

10 MS. FLECK: Jeimi Leon.

11 THE COURT: Jeimi what?

12 MS. FLECK: Leon.

13 MR. GRAHAM: Leon.

14 (End of bench conference.)

15 THE COURT: All right. Randy, Jeimi Leon is the next
16 witness.

17 Up here, ma'am. Sorry.

18 THE WITNESS: Sorry.

19 THE MARSHAL: Sorry. Will you please remain
20 standing, face the clerk and raise your right hand.

21 JEIMI LEON, STATE'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated.

23 THE MARSHAL: Please make sure to speak clearly and
24 loudly --

25 THE WITNESS: Okay.

1 THE MARSHAL: -- into the microphone.

2 THE CLERK: Please state your full name, spelling
3 your first and last name for the record.

4 THE WITNESS: Jeimi, J-E-I-M-I, Leon, L-E-O-N.

5 THE COURT: All right. You may proceed.

6 MR. GRAHAM: Thank you, Judge.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Jeimi, are you related to somebody by the name
10 of Roxana Perez?

11 A Yes.

12 Q How are you related to her?

13 A Cousin.

14 Q She's your cousin?

15 A Uh-huh.

16 Q All right. Who is your mother?

17 A Janet Rodriguez.

18 Q Okay. And at some point, did -- being related
19 to Roxana, did you ever encounter anybody by the name of
20 Guillermo Rodriguez -- or excuse me, Guillermo Renteria-Novoa?

21 A Yes.

22 Q All right. Do you see him in court today?

23 A Yes.

24 Q Can you point to him and identify an article of
25 clothing that he's wearing?

1 A He's over there wearing the long sleeve with the
2 headphones (indicating).

3 THE COURT: What color shirt?

4 THE WITNESS: Pink. Is that pink?

5 THE COURT: All right. The record will reflect that
6 Ms. Leon has identified the defendant.

7 MR. GRAHAM: Thank you, Judge.

8 BY MR. GRAHAM:

9 Q At some point, did you learn of an allegation
10 against Mr. Guillermo Renteria-Novoa about sexual abuse?

11 A Yes, I did.

12 Q And the person who was making that allegation
13 was Roxana Perez?

14 A Yes.

15 Q All right. When did you first learn of that?

16 A It was after she told my mom about it.

17 Q Would that have been in December of 2009?

18 A I believe so.

19 Q At some point, did you end up calling 9-1-1 to
20 report the incident?

21 A Yes, I did.

22 Q Did -- have you had a chance to actually listen
23 to that 9-1-1 tape?

24 A Yes, I did.

25 Q All right.

1 MR. GRAHAM: May I approach the witness?

2 THE COURT: You may.

3 BY MR. GRAHAM:

4 Q I'm showing you what's been marked --

5 MR. GRAHAM: Actually, has this been marked?

6 THE CLERK: No.

7 MR. GRAHAM: I'm sorry.

8 THE CLERK: That's okay. It will be 25.

9 MR. GRAHAM: All right.

10 BY MR. GRAHAM:

11 Q State's Proposed Exhibit No. 25, do you
12 recognize this CD?

13 A Yes.

14 Q How do you recognize that?

15 A It has my signature, my initials.

16 Q Did you put your initials on there after you
17 listened to it?

18 A Yes.

19 Q All right. And was that at our direction?

20 A Yes.

21 Q Okay. And per our conference at the bench,
22 we're not going to be playing this today. We'll be playing it
23 actually tomorrow. Did you do anything else with Roxana
24 before you called the police?

25 A Yes. We went to counseling. I had to go with

1 her because she was underage.

2 Q Okay. So you actually accompanied her --

3 A Uh-huh.

4 Q -- to the counselor?

5 A Yes.

6 Q All right. Why is it that you went with her to
7 the counselor? I mean, why did you even go to the counselor
8 in the first place?

9 A We didn't know how to approach the whole
10 situation, so my mom's best thought was to maybe go to
11 counseling, see how they could help us. Then the counselor
12 said, well, you guys have to call 9-1-1 and make a report. If
13 you guys don't, I have to do it either way because it's a
14 sexual assault.

15 Q Okay.

16 MR. GRAHAM: Nothing further. Pass the witness.

17 THE COURT: Cross-examination. And for the record,
18 Mr. Graham, you have not admitted Exhibit 25 yet.

19 MR. GRAHAM: Oh, excuse me. I move to admit it at
20 this point.

21 THE COURT: Any objection?

22 MR. FELICIANO: No objection.

23 THE COURT: All right. It's admitted.

24 (State's Exhibit 25 admitted.)

25 CROSS-EXAMINATION

1 BY MR. FELICIANO:

2 Q Good afternoon, ma'am.

3 A Hi.

4 Q So when you called 9-1-1, you were -- did you do
5 the translating for your aunt --

6 A Yes.

7 Q -- or -- okay. And when you found out, you said
8 you went to counseling, you didn't mention it to Roxana's
9 mother; is that correct?

10 A Yes.

11 Q That anything was going on?

12 A Yes.

13 Q And that was for several days?

14 A No, that was the same day after.

15 Q You told her mother the same day that you found
16 out?

17 A Yeah.

18 Q That you heard anything that was going on?

19 A Uh-huh.

20 Q Okay. And the counselor is actually the one who
21 told you you had to go to the police?

22 A Right.

23 Q They actually gave you till a certain time to
24 call the police?

25 A He just said -- I'm pretty sure this is what he

1 said. He said if we didn't make a report he was -- he had to
2 do it within a couple of days. I'm not sure how many days, so
3 either way he's going to -- he was going to call.

4 Q All right. So you call 1-1 after -- 9-1-1 after
5 that meeting?

6 A Not right after, but a couple hours during the
7 day.

8 Q And you said that when you called 9-1-1, you
9 said that the touching had been going on for about three years
10 between Guillermo and Roxana?

11 A Right.

12 Q And you've -- Roxana never told you anything
13 about any type of touching that was going on or anything like
14 that between her and Guillermo?

15 A During the whole three years, no.

16 Q Okay.

17 A She did tell us after we talked about it. We
18 were talking about it and she started saying what had
19 happened.

20 Q Right around the time that you took her to
21 counseling?

22 A Right.

23 Q But before that, for three years you never heard
24 any type of --

25 A No.

1 Q -- touching or anything like that?

2 MR. FELICIANO: Court's indulgence. Thank you,
3 ma'am.

4 THE COURT: All right. Any redirect?

5 MR. GRAHAM: No, Your Honor.

6 THE COURT: All right. The witness is excused.
7 Thank you very much for your testimony. You are free to go.

8 THE WITNESS: Thank you.

9 THE COURT: All right, ladies and gentlemen. It's
10 just short of 5:00 o'clock, so what we're going to do is we're
11 going to adjourn for the day. We've made pretty good
12 progress. It's my understanding that there's only just a
13 couple witnesses left, so we're much -- hopefully more than
14 halfway through the case or much more than halfway through the
15 case.

16 Here's what we're going to do about scheduling
17 tomorrow. I have an 8:30 calendar meeting. I have a bunch of
18 other cases I need to take care of in the morning, so we're
19 going to have a little bit of an unusual schedule. I'm going
20 to have the lawyers in here in the morning to talk about some
21 things. What I want you guys to do is -- unless you guys have
22 an objection. Let me see a show of hands if somebody
23 absolutely can't do this.

24 We're going to -- if I can ask you guys to have an
25 early lunch and we can start at 12:00 and then just keep going

1 with some breaks until 5:00 o'clock, or even after 5:00
2 o'clock if we're very, very close to the end; is everybody
3 okay with that? If you guys can grab an early lunch and then
4 that way, you know, it just makes it -- gives us more time.
5 And honestly, it's a shorter lunch for me, but I'm happy to do
6 that as long as it makes it more convenient for you guys, all
7 right?

8 So let's do that. We'll adjourn -- we'll meet again
9 at 12:00 o'clock tomorrow. You are admonished again that
10 until you begin deliberations, you are still under oath and
11 have not been discharged. Do not reach any conclusions about
12 this case as you have not heard all of the evidence, do not
13 talk to anyone about this case, do not investigate any facts
14 of this case, do not read any media press or Internet reports
15 about this case, do not talk to anyone who may be involved in
16 any way with this case, do not discuss the facts of this case
17 with each other.

18 Remember to wear your badge at all times around the
19 courthouse. Please leave your notebooks on your chairs. See
20 you tomorrow at 12:00 o'clock.

21 THE MARSHAL: All rise for the exit of the jury,
22 please.

23 (Jury recessed at 4:55 p.m.)

24 THE COURT: All right. We're outside the presence of
25 the jury. Anything that either side wanted to address before

1 we adjourn for the day? And here's what I wanted to ask you
2 guys. Where -- what are we doing on jury instructions 'cause
3 it looks like, by my count, the State only has maybe three
4 witnesses left. I don't know how many you have. We may be
5 closing tomorrow, at least there's a chance of it, so we need
6 to at some point go over jury instructions. So what I was
7 hoping to do is I have a short calendar tomorrow, which should
8 be over by 10:00. If it's not over by 10:00, it means that
9 we're waiting for attorneys, frankly.

10 So would it be possible to start talking about jury
11 instructions at maybe around 10:00 o'clock? And then I have
12 to leave at about 10:40 for an early lunch but I'll be back
13 here by 11:30, which is why I'm having the jury come back at
14 12:00. Is that possible or are you guys even anywhere close
15 on jury instructions or have you even thought about them or
16 what's going on?

17 MS. FELICIANO: Yeah, we've thought about them. We
18 just have to get them finished up. I think that's -- if we do
19 them at 10:00, do you think we'll --

20 THE COURT: I know you guys need to -- is that okay
21 to come back at 10:00 with the expectation that, you know, I
22 might -- I miss -- may have some leftover -- you know, private
23 attorneys sometimes show up at 10:00 o'clock, so I may have
24 leftover things. We'll work it in -- you know, intermix it
25 with the calendar; is that all right?

1 MS. FELICIANO: Uh-huh.

2 MS. FLECK: So well, could they -- I mean, when will
3 we get them, because we need to --

4 THE COURT: Yeah, I mean, I know you guys need to go.
5 I know you guys are pressing for time, but can you get them to
6 them maybe first thing in the morning and you can look at them
7 before 10:00 or something?

8 MS. FELICIANO: Yeah, we'll get them over there --

9 THE COURT: Is that possible?

10 MS. FELICIANO: -- as soon as possible.

11 THE COURT: Right.

12 MS. FELICIANO: Yeah.

13 THE COURT: I mean, I don't imagine you're going to
14 have like hundreds of them, right?

15 MS. FELICIANO: We don't. It should be fairly --

16 THE COURT: Right.

17 MS. FELICIANO: -- simple, hardly any to look
18 through. Take ten minutes, so we'll get them as soon as
19 possible.

20 MS. FLECK: Here, I guess, is the other thing for
21 scheduling. We do -- we have just three witnesses and then
22 the 9-1-1 call, but we have to play the defendant's statement.
23 It's my understanding that the defendant is thinking about
24 taking the stand and that, obviously, changes the scheduling.
25 Is -- I mean, what -- are you guys going to call any other

1 witnesses? Is there --

2 MR. FELICIANO: There shouldn't be, no.

3 THE COURT: Okay. And you have three left? Are they
4 -- and then we have -- well, we have seven minutes for the
5 9-1-1 call, 30 minutes for the played tape, and then how long
6 do you think your witnesses -- are they like -- are they quick
7 witnesses, or are any of them going to be just huge long,
8 three-hour long --

9 MS. FLECK: Oh, no, no. I mean, the longest will be
10 -- it's just the aunt, custodian of records from AT&T and the
11 detective. The detective will be the longest because we have
12 to play the statement through him.

13 THE COURT: Okay.

14 THE CLERK: And the aunt, you need a Spanish
15 interpreter for her, right?

16 MS. FLECK: Yes.

17 THE COURT: Oh, right. Okay.

18 MS. FLECK: We need a Spanish interpreter for that.

19 THE COURT: All right. Well, I mean, tomorrow -- it
20 seems like tomorrow was the day that we discussed the other
21 day, everyone's okay with staying late, so I'm -- you know, if
22 we're -- you know, if we're going to close tomorrow -- if
23 there's any chance of closing tomorrow, I'm happy keeping the
24 jury a little bit longer and that way, you know, maybe you can
25 come back Friday and just deliberate if they need to do that,

1 but that way you don't -- they don't have to -- you know, you
2 guys don't have to bring more witnesses in and all that kind
3 of stuff.

4 Is that -- let's shoot for that, but obviously, you
5 know, if defendant testifies and, you know, depending on how
6 long that goes, but -- all right. Anyway, so let's at least
7 reconvene here just with the attorneys at around 10:00
8 o'clock. We'll start at least talking about jury
9 instructions. And like I said, there may be some
10 interruptions, you know, 'cause I'm going to be doing my
11 calendar, but it's a really short calendar, so.

12 MS. FLECK: Okay.

13 MR. FELICIANO: Okay.

14 THE COURT: See you guys tomorrow.

15 MS. FLECK: Sounds good. Thank you.

16 MR. FELICIANO: All right. Thanks, Judge.

17 THE COURT: And I apologize for keeping you guys five
18 minutes late. I'm really -- I know you guys are in a rush,
19 but --

20 MS. FELICIANO: It's no problem.

21 THE COURT: -- hopefully you're not too bad.

22 MS. FELICIANO: It's no problem. Thanks.

23 (Court recessed for the evening at 4:59 p.m.)
24
25

CERTIFICATION

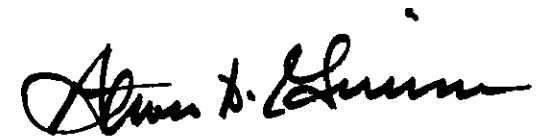
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AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C268285-1
)	DEPT NO. XX
vs.)	
)	
GUILLERMO RENTERIA-NOVOA,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
_____)	

BEFORE THE HONORABLE JEROME TAO, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 24, 2012

APPEARANCES:

For the State: MICHELLE FLECK, ESQ.
NICKOLAS J. GRAHAM, ESQ.
Deputy District Attorneys

For the Defendant: MIKE FELICIANO, ESQ.
AMY A. FELICIANO, ESQ.
Deputy Public Defenders

Interpreters: Lorena Pike
Yul Haasman
Maria Peralta de Gomez
Manuel Cavillo

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AA 000833

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1 **LAS VEGAS, NEVADA, THURSDAY, MAY 24, 2012, 12:23 P.M.**

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Are we on the record, Sara?

5 THE COURT RECORDER: Yes, you are.

6 THE COURT: All right. We are on the record outside
7 of the presence of the jury in State versus Guillermo
8 Renteria-Novoa. Mr. Renteria-Novoa is present and in custody
9 with the assistance of a Spanish interpreter. Is there
10 anything that either side wanted to address before we bring
11 the jury in?

12 MR. FELICIANO: No, Your Honor.

13 THE COURT: By the State?

14 MS. FLECK: I don't believe so, Your Honor. Thank
15 you.

16 THE COURT: All right. Let's -- Joe is rounding them
17 up right now. And you said your first witness needed an
18 interpreter; is that correct?

19 MS. FLECK: Actually, do we want to -- yeah. Do we
20 want to see real quickly if the audio works so it's all cued
21 up for when we play the defendant's statement?

22 THE COURT: Sure. We're -- Joe's rounding them up
23 anyway.

24 (Pause in proceedings)

25 MS. FLECK: Cool. And then did we admit the 9-1-1

1 yet?

2 THE CLERK: Uh-huh. [Inaudible] --

3 MS. FLECK: Okay. So we're going to do one witness,
4 and then we'll play our 9-1-1. And then we'll do our other
5 ones. Let me just make sure this one works too. Okay.

6 THE COURT: Okay. Are we ready?

7 MS. FLECK: Yeah. Is there any way to -- is there
8 any way to take off their screens from my screen? Cool.
9 Thank you. Ask and you shall receive.

10 THE COURT: Oh, it sounds like they're here.

11 THE MARSHAL: Are you ready for them?

12 THE COURT: I think we're ready. Let's bring them
13 in.

14 THE MARSHAL: All rise for the presence of the jury.

15 (Jury reconvened at 12:27 p.m.)

16 THE MARSHAL: Please be seated.

17 THE COURT: All right. Will counsel stipulate to the
18 presence of the jury?

19 MR. FELICIANO: Yes, Judge.

20 MS. FLECK: Yes, State does. Thank you, Your Honor.

21 THE COURT: All right, ladies and gentlemen. Welcome
22 back. I apologize for making you wait. I know I said 12:00
23 o'clock. It's 12:30. If it makes you feel better, and it
24 probably doesn't, just to let you know what kind of day it's
25 been for me and for this Court, I haven't even eaten lunch

1 yet; so hopefully, that makes you understand that it's not
2 like we're just goofing off in here.

3 All right. Are we ready for our next witness?

4 MR. GRAHAM: Yes, Your Honor. State calls Janet
5 Rodriguez.

6 THE MARSHAL: Step up here to the witness stand,
7 remain standing, raise your right hand and face the clerk.

8 THE WITNESS: Okay.

9 THE COURT: And don't forget to move the microphone
10 when she gets up there.

11 THE CLERK: Raise your right hand, please.

12 JANET RODRIGUEZ, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please
14 state your full name, spelling your first and last name for
15 the record.

16 THE WITNESS: Okay.

17 THE COURT: What is your full name and can you spell
18 it?

19 THE WITNESS: Janet Rodriguez.

20 THE COURT: Can you spell it, please.

21 THE WITNESS: J-A-N-E-T, R-O-D-R-I-G-U-E-Z.

22 THE COURT: Thank you. You may proceed.

23 MR. GRAHAM: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. GRAHAM:

1 Q Janet, where are you originally from?

2 A Tabasco, Mexico.

3 Q When did you first move to Las Vegas?

4 A 1999.

5 Q All right. And who did you move to Las Vegas
6 with?

7 A With my family.

8 Q All right. And at some point, did you meet --
9 or do you have a niece named Roxana Perez?

10 A Yes.

11 Q At some point, did she move from Mexico to live
12 with you?

13 A Yes.

14 Q All right. And who did -- who did Roxana move
15 with?

16 A My house.

17 Q Who did she move up here from Mexico with?

18 A With her mother and her sister.

19 Q And what are their names?

20 A Roxana Perez and Perla Crystal [phonetic] Perez
21 and Rosa Maria Rodriguez.

22 Q At some point, did Rosa and the girls move out
23 of your home?

24 A Yes.

25 Q Did there come a time when you met a person by

1 the name of Guillermo Renteria-Novoa?

2 A Yes, I met him.

3 Q When did you meet him?

4 A Oh, it's been approximately like long time.
5 It's four -- it's more four or five, seven, maybe more.

6 Q So a long time?

7 A Long time, yeah. I not remember now exactly the
8 (Witness in English.) --

9 THE INTERPRETER: Your Honor?

10 THE COURT: Hang on. Ma'am, hang on.

11 THE INTERPRETER: Can I get some instructions as to
12 how to proceed when she answers in English or if she wants to
13 learn English --

14 THE WITNESS: I'm sorry. (Witness in English.)

15 THE INTERPRETER: -- or Spanish or what can I do?

16 THE COURT: Ma'am, here's what I recommend. Can you
17 limit -- since we have the assistance of the interpreter and
18 everything has to be recorded --

19 THE WITNESS: I'm so sorry. (Witness in English.)

20 THE COURT: -- and transcribed, can you -- I
21 understand that you probably comprehend some English from
22 having lived in the United States and I understand that
23 there's some answers that you could respond to in English, but
24 so the record is clear, I would ask that you respond to
25 everything in Spanish just so we have, you know, the interpret

1 -- everything goes through the interpreter so that when --
2 later on when the record is typed up, it's clear --

3 THE WITNESS: Okay.

4 THE COURT: -- all right?

5 THE WITNESS: Okay.

6 THE COURT: Thank you.

7 BY MR. GRAHAM:

8 Q How is it that you met Guillermo?

9 A In a family party.

10 Q Was he in a relationship with Rosa?

11 A Yes.

12 Q Do you see him in court today?

13 A No.

14 Q All right. Do -- have you looked at everybody
15 in the courtroom?

16 A Oh, yeah, I'm sorry. (Witness in English.)

17 Q All right. Can you point to him and identify an
18 article of clothing that he's wearing?

19 A Yes, he has a shirt like -- like -- like strong
20 pink (indicating).

21 MR. GRAHAM: I'd ask that the record reflect that the
22 witness has identified the defendant.

23 THE COURT: The record will so reflect.

24 BY MR. GRAHAM:

25 Q At some point in time in December of 2009, did

1 you learn about some allegations that Roxana had engaged in
2 sexual conduct with Guillermo?

3 A Yes.

4 Q How did you learn about that?

5 A My niece Maritza, she make comments to me
6 that --

7 MR. FELICIANO: I'm going to object to hearsay.

8 A -- something was going --

9 THE COURT: Hang on. Hang on. Hang on.

10 A -- on with --

11 THE COURT: Hang on one second, okay? There's an
12 objection.

13 Your response?

14 MR. GRAHAM: I can rephrase and kind of instruct.

15 BY MR. GRAHAM:

16 Q Without telling me -- telling us or the jury
17 what Maritza said, how did you find out about the allegations?

18 A I spoke to Roxana direct.

19 Q All right. After speaking with Roxana, what did
20 you do?

21 A I -- the decision I made because I am a mother
22 is to take her -- I told her if she wanted to go to a
23 psychologist.

24 Q And why did you ask her that?

25 A Because she was not feeling prepared to speak

1 with her mother.

2 Q Why do you say that?

3 A Because she says that she felt like --

4 MR. FELICIANO: I'm going to object to hearsay again.

5 THE COURT: Hang on. Your response to the objection?

6 MR. GRAHAM: My question was why she felt that Roxana
7 was unprepared, so I can -- I can just say without telling --
8 I'll just rephrase.

9 THE COURT: Thanks.

10 BY MR. GRAHAM:

11 Q Without telling us what Roxana said, why did you
12 feel that she was unprepared to tell her mother, Rosa.

13 MR. FELICIANO: Judge, and that same objection. That
14 answer is going to be based on hearsay information.

15 MR. GRAHAM: It's not.

16 THE COURT: Well, it may or may not be because
17 technically he's asking about her feelings. She may have some
18 -- it may be based on observations. Let's at least hear her
19 answer first.

20 BY MR. GRAHAM:

21 Q You can answer the question. Without saying
22 what Roxana told you, why did you feel that she was unprepared
23 to tell her mother?

24 A Without telling, okay. (Witness in Spanish.) I
25 not understand you. (Witness in English.)

1 Q Okay. Was there a specific reason, other than
2 you feeling that Roxana was unprepared to tell her mother,
3 that you sent her to a psychologist?

4 A Yes.

5 Q What was that?

6 A I was abused.

7 Q Okay. And did you feel that you could relate to
8 Roxana?

9 A Yes.

10 Q And did you feel that counseling would help her?

11 A Yes.

12 Q Okay. How is it that you ultimately decided to
13 tell her mother, Rosa?

14 A First, we take -- we took Roxana to the
15 psychologist. The psychologist prepare her well, and then I
16 told her this is very important for your mother to know.
17 Nobody has a right to touch you. You deserve respect. You
18 are worth and nobody can do this to you.

19 Q When Roxana disclosed this abuse to you, without
20 saying what she said, how was she acting?

21 A A lot -- she was crying a lot.

22 Q Explain to us and the jury the situation when
23 you finally did tell Rosa. How did that occur?

24 A We went to her house, my daughter, myself, my
25 niece, Roxana's sister, and I started to tell Rosa, the mother

1 what this gentleman was doing to her daughter. And Rosa got
2 into like a shock. She was crying like she was not getting
3 it. She block herself from nervousness.

4 Q Why is it that you decided to tell the doctor
5 before you told Rosa?

6 A Excepting that when one goes through that, the
7 list of the things we -- one wants to do is to talk to the
8 family.

9 Q Can you kind of explain that again? I'm not
10 sure I understood entirely?

11 A Yes. I -- what I wanted to say is that when
12 that happened, one sense -- feels some more -- so much shame,
13 one feels dirty, one doesn't want to -- our own family to find
14 out what's going on. I was feeling that she was in need of
15 professional help.

16 MR. GRAHAM: Pass the witness.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. FELICIANO:

20 Q Good afternoon, ma'am.

21 A Good afternoon.

22 Q You were interviewed by the police in this case,
23 right?

24 A Yes.

25 Q And that was in April of 2010?

1 A Yes.

2 Q You were there when the police were called
3 initially, right?

4 A Yes.

5 Q And that was back in December of 2009?

6 A Yes.

7 Q You never suspected anything was going on
8 between Guillermo and Roxana?

9 A No.

10 Q If you -- and if you would have seen something
11 that concerned you, that you would have done something about
12 it?

13 A Yes.

14 Q And you have observed them together before?
15 You've seen Guillermo and Roxana in the same location?

16 A The truth, I didn't have too much -- too much
17 relations -- relationship with them. They were just a few
18 times.

19 Q But you --

20 A I moved from Las Vegas to Arizona to live when
21 him and my sister were together. I didn't have the chance to
22 -- to hang out with them a lot.

23 Q The times that you did see them, though,
24 together you didn't suspect anything?

25 A No, I saw him as a gentleman of respect.

1 Educated, that was impression I had from -- from him when I
2 was seeing him.

3 Q Okay. Thank you, ma'am.

4 A You're welcome. (Witness in English.)

5 THE COURT: Any redirect?

6 MR. GRAHAM: Just briefly.

7 THE COURT: Okay.

8 REDIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q Would it be a fair statement to say that you
11 didn't suspect Mr. Renteria-Novoa of doing anything because
12 you trusted him as your sister's boyfriend?

13 A Honestly, I trust no man. (Witness in Spanish.)
14 Sorry. (Witness in English.)

15 MR. GRAHAM: Nothing further.

16 THE COURT: Anything further?

17 MR. FELICIANO: No, Judge.

18 THE COURT: All right. Is the witness excused?

19 MS. FLECK: Yes.

20 THE COURT: Thank you, Ms. Rodriguez for your
21 testimony. You are free to go.

22 State, who is your next witness?

23 MS. FLECK: Your Honor, actually, at this time we are
24 going to play the 9-1-1 tape that was previously admitted.

25 THE COURT: One second here.

1 MS. FLECK: Whoops. Actually --

2 THE COURT RECORDER: Sorry.

3 MS. FLECK: Yeah, don't -- sorry. Do you want me to
4 clear mine?

5 THE COURT RECORDER: Just tell me when you're ready.

6 THE COURT: Let's wait till Ms. Rodriguez leaves the
7 courtroom.

8 All right. And for the record, I believe the 9-1-1
9 tape was previously admitted as Exhibit 25.

10 MS. FLECK: Yes. It -- do we have to put it on the
11 screen? Can we just do the audio?

12 THE COURT RECORDER: I'm not sure.

13 MS. FLECK: Okay.

14 THE COURT RECORDER: Let's see if it works.

15 MS. FLECK: Should we try? Okay. So by stipulation,
16 we'll now play State's Exhibit -- I'm sorry. What was it?

17 THE COURT: 25.

18 MS. FLECK: 25.

19 THE COURT: So we have to put it on the screen?

20 THE COURT RECORDER: Uh-huh.

21 THE COURT: All right. It's just going to be a bunch
22 of squiggly movie stuff -- moving stuff.

23 MS. FLECK: No problem.

24 THE COURT: Yeah, okay.

25 THE COURT RECORDER: Are you ready?

1 MS. FLECK: Is it not going?

2 THE COURT RECORDER: Are you ready? I was going to
3 wait.

4 MS. FLECK: Oh, I need to toggle it, I think.

5 THE COURT RECORDER: I haven't switched it to you,
6 yet. If you're ready, let me know.

7 MS. FLECK: I'm ready.

8 (State's Exhibit No. 25 played.)

9 THE COURT: Is that the end of it?

10 MS. FLECK: Yes. Thank you, Your Honor.

11 THE COURT: All right. State, who is your next
12 witness?

13 MR. GRAHAM: It's going to be the custodian of
14 records from AT&T.

15 THE MARSHAL: What's his name?

16 MR. GRAHAM: The first name is Connor.

17 THE MARSHAL: Step up here to the witness stand,
18 remain standing, raise your right hand and face the clerk.

19 CONNOR MCCOY, STATE'S WITNESS, SWORN

20 THE CLERK: Thank you. Please be seated. Please
21 state your full name, spelling your first and last name for
22 the record.

23 THE WITNESS: Connor, C-O-N-N-O-R, McCoy, M-C-C-O-Y.

24 THE COURT: All right. You may proceed.

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q Mr. McCoy, are you employed by AT&T?

3 A Yes, I am.

4 Q All right. How long have you been with AT&T?

5 A In a week it'll be two years.

6 Q Okay. As part of your -- actually, what is your
7 job title there?

8 A I'm a retail sales manager with AT&T.

9 Q Okay. And as part of your job duties, do you
10 have access to customers' phone records?

11 A Yes, I do.

12 Q How are those records stored?

13 A They're stored in a computerized database.

14 Q And they -- are they kept in the ordinary course
15 of business -- are they kept in the ordinary course of
16 business?

17 A Yes, they are.

18 Q Okay. And was your company, AT&T, served with a
19 subpoena by the State in order to produce the records for an
20 -- or excuse me, not employee, a subscriber of yours named
21 Guillermo Renteria-Novoa?

22 A Yes, we were.

23 Q All right. And in accordance with that
24 subpoena, did you bring the records specifically from November
25 2009 to December 2009, to court today?

1 A Yes, I did.

2 Q And are those them right there?

3 A Yes.

4 Q Okay.

5 MR. GRAHAM: At this point, I would move for the
6 admissions of the State's -- of the State's Proposed 20 --

7 THE CLERK: 6.

8 MR. GRAHAM: -- 6.

9 THE COURT: Have you had a chance to see these?

10 MR. FELICIANO: May I take a look at them real quick?

11 No objection.

12 THE COURT: All right. 26 is admitted.

13 (State's Exhibit 26 admitted.)

14 MR. GRAHAM: And move to publish at this time.

15 THE COURT: You may publish.

16 BY MR. GRAHAM:

17 Q All right. Now, I'm directing you -- we're
18 going to be able to look at the screen right in front of you.
19 I'm going to put some of the phone records up, and I was going
20 to have you explain to us what they are 'cause it's kind of
21 hard to read.

22 A Sure. Absolutely.

23 Q This first page is what's known as subscriber
24 information; is that correct?

25 A Yes, that's correct.

1 Q All right. And what kind of information is on
2 this page?

3 A It just has mainly the subscriber's name, phone
4 number, and I believe it also shows the date that they started
5 service with us, along with the serial number for the phone
6 and the sim card number, which is pretty much the brains of
7 the phone.

8 Q All right. So up here, I'm pointing to the
9 name, would that be the client's name, Renteria -- or excuse
10 me, Guillermo Renteria?

11 A Yes, that's the subscriber registered to that
12 phone number.

13 Q And then this is the phone number that you have
14 for him, (702) 460-1242?

15 A That's correct, yes.

16 Q All right. Now, in accordance with the
17 subpoena, you also produced what's called, I believe, a
18 legend; is that correct?

19 A Yes.

20 Q Let me put that up here. Now, actually, you
21 know what, let's just go over this part right here where it
22 says "voice," "seizure time," "originating number,"
23 "terminating number." Can you take us through that? What is
24 the connection -- or excuse me, the conn. date and conn. time?

25 A That is the time and date that the phone call

1 was made.

2 Q All right. And what about seizure time?

3 A Seizure time is basically the time that you dial
4 the number, and it's any time that elapses before it connects
5 to our network; so usually that's below ten seconds.

6 Q All right. What about --

7 THE COURT: Let me just clear a fact in my own
8 edification. Seizure time is when the subscriber or the
9 caller connects to the network, not necessarily when they
10 connect to the other person; is that correct?

11 THE WITNESS: Correct. Correct. It's when they --
12 it's the time that elapses from when they literally punch in
13 the number to the time it connects to AT&T's network.

14 THE COURT: Got you. Okay. Thanks.

15 BY MR. GRAHAM:

16 Q So that would be the time when you're waiting on
17 your cell phone to hear it start ringing?

18 A Exactly.

19 Q Okay. The originating number, what is that?

20 A That is the number that is dialing out.

21 Q So that would be the person that -- whatever
22 number you typed in, that's the originating number?

23 A Correct.

24 Q Okay. What about terminating number?

25 A That is the number that that number was dialing

1 to. That's the number that would call.

2 Q That they're calling, perfect. What is the next
3 part right here, elapsed time?

4 A That's the amount of time that once -- once the
5 call has connected to our network until the call is
6 terminated, so it doesn't include any of the seizure time. It
7 only includes the time that the call was on our network until
8 the call ended.

9 Q Then the number dialed?

10 A That would be the -- the terminating number in
11 those circumstances.

12 Q So the same thing, terminating number is the
13 same as that number dialed?

14 A Exactly.

15 Q All right. Let's go to Mr. Renteria's phone
16 records then, and as an example --

17 MR. GRAHAM: And just so you guys know, Page 12.

18 BY MR. GRAHAM:

19 Q It might be a little bit hard for -- what I'm
20 going to do is I'm going to zoom in -- actually, I'm going to
21 zoom out so we can get the column straight and then we'll go
22 through there. So on this date, let's go to Line 423. So if
23 we go up, it says connection date. So 11/23/2009, would that
24 be the date that Mr. Renteria made a phone call?

25 A That's correct.

1 Q All right. And we go across to 6:32 a.m. Is
2 that the time that he placed the call?

3 A Yes, that's correct.

4 Q That's the time that he actually pressed "send"
5 -- or you know --

6 A Press send, correct, yeah.

7 Q Okay. Perfect. Now, seizure time?

8 A That's the time that it took for it to actually
9 connect to our network, so that's a lot higher than it usually
10 is. That's the time -- that's -- that's pretty much the wait
11 time until it actually connected to our network they're
12 calling through.

13 Q All right.

14 THE CLERK: Can he keep up his voice, please?

15 THE COURT: Can you speak up a little louder? She
16 has to record --

17 THE WITNESS: Sure.

18 THE COURT: -- what you're saying.

19 THE WITNESS: Okay.

20 THE COURT: We can't hear.

21 THE WITNESS: Absolutely.

22 BY MR. GRAHAM:

23 Q Now, we're going to originating number, and
24 that's 1-702-460-1242?

25 A So that's the number that actually made the

1 call, placed the out -- outgoing call.

2 Q So that'd mean Mr. Renteria's phone number?

3 A Yes.

4 Q All right. Terminating number is 702-426-9416,
5 so that'd be the number he's calling?

6 A That's correct, yes.

7 Q All right. And the elapsed time is four
8 seconds?

9 A So -- so that could have been -- it's anything
10 from the seizure time until the call ended. So it could have
11 just been dialed and gone right to voice mail, or there could
12 have been a four-second conversation before it ended.

13 Q All right. And then dialed number is, again,
14 the same 702-426-9416?

15 A Yes, correct.

16 Q All right. And so if we look at this, you can
17 see that on this date, he dialed -- on November 23rd, he
18 dialed -- here, let me go over a little bit -- this 4 -- 9416
19 number several times in a row; is that correct?

20 A Yes, that's correct.

21 Q Now, there is -- now, these records go all the
22 way till December; is that right?

23 A Yes, that's what we were -- we were asked to
24 pull, November and December's records from 2009.

25 MR. GRAHAM: Pass the witness.

1 THE COURT: Cross-examination.

2 MS. FELICIANO: Court's indulgence.

3 MR. FELICIANO: May we approach?

4 THE COURT: I'm sorry?

5 MR. FELICIANO: Can we approach?

6 THE COURT: Sure.

7 (Bench conference)

8 THE COURT: What's up?

9 MR. FELICIANO: Those weren't -- Roxana never
10 testified to what her phone number was.

11 MS. FLECK: So what? The detective can testify to it
12 in about two minutes.

13 MR. FELICIANO: So I don't think those records were
14 properly admitted. If she has to testify --

15 MS. FLECK: They're the defendant's phone records.

16 MR. GRAHAM: It's the defendant's phone records.

17 THE COURT: Then maybe you should have objected to it
18 before, you know, when I asked you.

19 MR. FELICIANO: Okay. Well, I'm just making the
20 record right now.

21 MS. FLECK: But it's the defendant's phone records.
22 It's not Roxana's phone records.

23 THE COURT: Right. All right. Well, I mean, the
24 problem is they're already admitted. The jury's already seen
25 them.

1 MS. FLECK: That's --

2 THE COURT: I asked you if you had any objection.

3 What he's doing now, technically, is he's objecting to the
4 records. The problem is, you know, that bridge --

5 MS. FLECK: But --

6 THE COURT: -- that train, you know, it's come and
7 gone.

8 MS. FLECK: What's the basis of his objection?
9 They're the defendant's records.

10 THE COURT: Well, it doesn't matter. What I'm saying
11 is it's untimely.

12 MS. FLECK: Yeah.

13 MR. FELICIANO: It's irrelevant at this point since
14 we have no -- we don't know what her phone number is and
15 they're irrelevant.

16 MS. FLECK: It's his records.

17 MR. FELICIANO: I know that.

18 MS. FLECK: So now somebody else can testify --

19 THE COURT: Well, hang on. Hang on --

20 MS. FLECK: -- as to what her number is.

21 THE COURT: -- one second. Hang on. All right.

22 First of all, it's untimely. Secondly, they haven't said that
23 that's Roxana's phone number. They've just said there were a
24 number of calls made to that -- made to that number, so I
25 mean, if you're objecting that that's Roxana's phone number,

1 they haven't actually said that yet.

2 MR. FELICIANO: He doesn't know.

3 THE COURT: Right.

4 MR. FELICIANO: Then they're still irrelevant at this
5 point.

6 MS. FLECK: They're his records.

7 MR. FELICIANO: I understand that.

8 MS. FLECK: How are his phone records irrelevant?

9 THE COURT: All right. Well, I mean, we don't know
10 if they're relevant or not because they haven't -- you know,
11 maybe they're going to connect it up. So right now your
12 objection is overruled, all right?

13 MS. FLECK: Okay.

14 (End of bench conference.)

15 THE COURT: All right. Any cross-examination?

16 MR. FELICIANO: No, Your Honor.

17 THE COURT: All right. Is the witness free to go?

18 MR. GRAHAM: Yes.

19 THE COURT: All right. Thank you, Mr. McCoy, for
20 your testimony.

21 THE WITNESS: Thank you.

22 THE COURT: Mr. Graham, you might want to -- does he
23 have any other paperwork that --

24 MR. GRAHAM: That would be his subpoena that I
25 signed.

1 THE COURT: Okay. Got you. All right.

2 MR. GRAHAM: Thank you.

3 THE COURT: All right. Who is your next witness?

4 MS. FLECK: Can we approach?

5 (Bench conference)

6 MS. FLECK: He's parking. I --

7 THE COURT: Hang on.

8 MS. FLECK: It's the detective. I told him to be
9 here at 1:15. I just called him and he's on his way, but it
10 -- we're going much faster than I had anticipated, so --

11 THE COURT: Is there any --

12 MS. FLECK: There's --

13 THE COURT: Is that your last --

14 MS. FLECK: That's our last one.

15 THE COURT: -- witness?

16 MS. FLECK: But he literally should be here within --
17 I mean, I called him at a quarter till and he said he could be
18 in ten minutes, so he should be here any minute.

19 THE COURT: All right. I mean, do you need a break?
20 Okay. All right. Let's take -- I'll go tell the jury that
21 the other witness is parking his car and we'll just take a
22 short break then, all right?

23 MS. FLECK: Okay.

24 THE COURT: Is that all right?

25 MS. FLECK: Sure.

1 THE COURT: I mean, do you have any objection of my
2 using those words just so the jury isn't wondering what the
3 heck is going on?

4 MS. FLECK: No.

5 THE COURT: Okay. All right.

6 (End of bench conference.)

7 THE COURT: All right, ladies and gentlemen. Here's
8 what's going on. The next witness apparently had just called
9 the DA and they are parking their car right now, so we're
10 going to take a short break now. I can't promise you how long
11 it's going to be, five minutes, ten minutes, something like
12 that, but apparently, he's just right outside in the street
13 parking so hopefully it'll be quick.

14 So let's take a short break rather than have you just
15 sit here pointlessly. During this break, you are admonished
16 that until you begin deliberations, you are still under oath
17 and have not been discharged. Do not reach any conclusions
18 about this case as you've not heard all the evidence. Do not
19 talk to anyone about this case, do not investigate any facts
20 of this case, do not view any media press or Internet reports
21 about this case, do not talk to anyone who may be involved in
22 any way with this case, do not discuss the facts of this case
23 with each other. Remember to wear your badges at all times
24 around the courthouse. Please leave your notebooks on your
25 chairs.

1 What I would ask is since the witness could be here
2 momentarily or maybe more like ten minutes, I'm not sure, as
3 I'm sure you guys have experienced, the elevators in this
4 building are a little unpredictable and you have to wait in
5 line.

6 THE MARSHAL: I'll just keep them back here.

7 THE COURT: Oh, you want to keep them back there?
8 Let's do that then. Let's keep them back there that way we
9 can round up quickly if we need. All right.

10 (Jury recessed at 1:06 p.m.)

11 THE COURT: Here's my question. Do you guys actually
12 want to take an actual break or do you want to maybe try to
13 squeeze in some more discussion on the jury instructions or
14 what? I don't know if Ms. Fleck, if you even had a chance to
15 look at the ones that we were waiting for you to look at or
16 not? You probably haven't, right?

17 MS. FLECK: I haven't.

18 THE COURT: All right. So -- all right. I guess
19 let's -- is there -- all right. Let's do this. We're outside
20 the presence of the jury. Is there anything that either side
21 wanted to put on the record?

22 MS. FLECK: Well, we have one witness left, so maybe
23 we could see if the defendant's going to take the stand.

24 THE COURT: Yeah, let's do this. We might as well do
25 that also. I also can give him his admonishment either way.

1 All right. Let's stay on the record for just a second.

2 All right. Mr. Renteria-Novoa, I need you to listen
3 to what I'm about to tell you. You have the right under the
4 Constitution of the United States and under the Constitution
5 of the State of Nevada not to be compelled to testify in this
6 case. That means that no one can make you take the witness
7 stand and make you answer any questions. Do you understand
8 that?

9 THE DEFENDANT: I would like to speak --

10 THE COURT: Well, hang on. I just want to make sure
11 -- the question is, do you understand what I've just told you.

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. You may, if you wish, give up that
14 right and you may take the witness stand and testify. If you
15 do, you will be subject to cross-examination by the district
16 attorney as well as by your own attorney and anything that you
17 say, whether in response to questions by your attorney or by
18 the district attorney, will be the subject of fair comment
19 when the district attorney speaks to the jury in final
20 argument. Do you understand that? I need you to say "yes" or
21 "no," sir.

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. If you -- hang on. I'm not done
24 yet. If you choose not to testify, the Court will not permit
25 the district attorney to make any comment to the jury

1 concerning the fact that you have not testified. If you elect
2 not to testify, the Court will instruct the jury if your
3 attorney specifically requests an instruction which reads
4 substantially as follows: The law does not compel a defendant
5 in a criminal case to take the stand and testify and no
6 presumption may be raised and no inference of any kind may be
7 drawn from the failure of a defendant to testify. Do you have
8 any questions for me about anything that I have just recited
9 to you?

10 THE DEFENDANT: No.

11 THE COURT: Okay. If you choose to testify and if
12 you have been convicted of a felony within the past ten years
13 or have been on parole or probation for a felony within the
14 past ten years, the district attorney will be permitted to ask
15 you, No. 1, if you have been convicted of a felony; No. 2,
16 what was the felony; and No. 3, when it happened. No other
17 details may be gone into regarding any prior felony
18 convictions; however, if you deny having a felony conviction
19 and you do, in fact, have a felony conviction, the State may
20 impeach your testimony with certified copies of conviction
21 which may contain more information in them than simply what
22 the felony was and when it occurred. Do you understand what I
23 just read to you.

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And earlier, Mr. Feliciano or

1 Mrs. Feliciano, it seemed like the defendant wanted to say
2 something. You may want to preview what he wants to say or,
3 you know, see what it -- if it's even appropriate.

4 MR. FELICIANO: Okay.

5 THE COURT: Do we have any update on the detective?

6 MR. GRAHAM: He's on his way.

7 MS. FLECK: That was not -- that wasn't an update.
8 He already knew that.

9 MR. GRAHAM: I mean, he -- oh, that. Okay. Yeah.

10 MS. FLECK: Can we -- can we try to see if there's
11 any way that I can have my screen on without -- is there any
12 way of doing that, of playing it without that up there 'cause
13 I need to use my computer?

14 MR. GRAHAM: You know, I can go downstairs --

15 MS. FLECK: Or any other way of playing it?

16 THE COURT: You can play it into the microphone,
17 although it wouldn't come out through -- well, it -- I don't
18 know how the sound quality will be. That's the --

19 MS. FLECK: Yeah, that --

20 THE COURT: -- other way to do it.

21 MS. FLECK: -- won't work.

22 MR. FELICIANO: So Judge, Mr. Renteria does have a
23 statement to make to the Court.

24 THE COURT: Are you sure it's a good idea? You
25 advised him of his right not to say anything on the record and

1 that anything he says will and -- can and will be used against
2 him by the DA if it's incriminating in any way or damaging in
3 any way; you told him that?

4 MR. FELICIANO: I have advised him that I will not
5 make the statement that he wants made, so he -- but he insists
6 on making it, so --

7 THE COURT: All right. Mr. Renteria-Novoa, it's my
8 understanding that against the advice of your attorney you
9 wish to say something to me right now. You should know that
10 anything you say right now will be recorded. You know, all
11 the microphones are on. The DA is sitting right there and
12 anything that you say can be used against you in this case.
13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Well -- and I also want you
16 to confirm for me that you wish to make this statement on your
17 own against the advice of your attorney.

18 THE DEFENDANT: It's not against it. I consulted
19 with them and he is in agreement that I can make this
20 statement to the Court.

21 THE COURT: All right.

22 MR. FELICIANO: I told -- that's -- I told him --
23 Court's indulgence.

24 THE DEFENDANT: I'm not going to say anything.

25 THE COURT: Okay. All right. So after consultation

1 with your attorney, you no longer wish to say anything?

2 THE DEFENDANT: I can't say anything.

3 THE COURT: Okay. I'm just -- okay. All right. So
4 you -- so I just want to make sure. Right now do you wish to
5 make a statement or not?

6 THE DEFENDANT: No.

7 THE COURT: Okay. Thank you. All right. Anything
8 else that either side wanted to put on the record? Was there
9 any -- were there any objections that you guys wanted to
10 memorialize or not? It's up to you guys.

11 MS. FLECK: So is he -- is he take -- does that mean
12 he's not taking the stand or he's not making the statement
13 right this minute?

14 THE COURT: My understanding is he's just not take --
15 making a statement right this minute, or am I
16 misunderstanding?

17 MR. FELICIANO: He's -- I discussed it with him.
18 He's not going to take the stand.

19 THE COURT: Okay. All right. So was there anything
20 that either side wanted to memorialize that happened with the
21 last couple witnesses? I know we had a sidebar, you know, and
22 as I indicated before, the microphones are kind of sketchy.
23 It's up to you whether you want to make a -- you know, make a
24 record or not.

25 MR. FELICIANO: Judge, I would just make a record

1 that those -- the phone records in this case were improperly
2 admitted. They're irrelevant. They have no -- 'cause we
3 don't know what the victim's -- the complaining witness's cell
4 phone number is or any contact information for her, so we just
5 submit that those records are irrelevant and shouldn't have
6 been admitted.

7 THE COURT: And your response, Ms. Fleck?

8 MS. FLECK: Well, first of all, it's the defendant's
9 phone records be irrelevant in his criminal prosecution.
10 First -- it's not only the victim that he called. It's also
11 Maritza, and we have the phone number in for Maritza. We're
12 getting in through the detective the two numbers that were
13 relevant to him during his investigation, which is the house
14 number of Rosa and Roxana and Roxana's cell phone. So those
15 are the numbers that he was searching for, and that comes in
16 through his investigation.

17 THE COURT: All right. Well, first of all, when the
18 State proffered the phone records into evidence, I made sure
19 that the defense was given a chance to look at the records and
20 asked if they had any objections, and at the time you
21 indicated that you had not -- you did not have an objection.
22 We then proceeded to admit the records as Exhibit 26 and
23 publish them to the jury.

24 Now, your objection is they're not relevant because
25 the -- this is my understanding, because the State has not

1 actually established what the phone number of the victim in
2 this case was. But I'll note that during Mr. McCoy's
3 testimony, there was no testimony that any of those numbers on
4 the records were actually the victim's testimony. So while it
5 may -- while it may be true that they haven't admitted
6 evidence of what her phone number was, and honestly, I can't
7 remember specifically, I'll have to look through my notes, if
8 they did or not, because Mr. McCoy's testimony never attempted
9 to establish that in fact any of those numbers were the
10 victim's numbers, I'm not sure your objection is appropriate
11 at this point.

12 And secondly, as Ms. Fleck has mentioned, there may
13 be other reasons why the phone number -- phone records are
14 being admitted; and thirdly, the State hasn't finished
15 introducing their evidence and the witnesses and so it's
16 entirely possible that there may be a future witness who may
17 connect up or show the relevance of other information in those
18 records, and therefore, for those reasons, at the sidebar I
19 had denied your objection.

20 MR. FELICIANO: Okay.

21 THE COURT: Anything else you guys -- I'm sorry.

22 MS. FELICIANO: The only thing is is that the State
23 is now saying that they're going to introduce the phone number
24 through the detective. That's hearsay. They're going to say,
25 well, we're introducing it for his investigation, but then

1 they're going to use it substantively as to the phone records
2 to show when Mr. Renteria called her. The reason it took us a
3 moment to make the objection on the phone records is because
4 we were reviewing on the computer the detailed notes that we
5 had taken from her trial testimony to make sure that it had
6 not been testified to before we made that objection.

7 Once we saw she had not testified to that number,
8 then we made the objection. But to have it then introduced
9 through the detective, he only knows it -- it's purely
10 hearsay. And because the only reason that the State could
11 introduce it as an exception to hearsay is not for the truth
12 of the matter asserted. Then it can't be used substantively
13 later to say that those phone records show that Mr.
14 Renteria-Novoa called the alleged victim, Roxana.

15 MS. FLECK: Well, it's not an out-of-court statement
16 if he has used that number and called that phone number in
17 order to get in touch with Roxana and Rosa. That's like
18 saying that me knowing my own cell phone number is hearsay. I
19 mean, it's -- that's information obviously that he has used,
20 so it's not an out-of-court statement.

21 MS. FELICIANO: He would have gained that only from
22 the alleged victim.

23 MS. FLECK: Well, you gain everything --

24 THE COURT: Well --

25 MS. FLECK: -- from somebody in some way.

1 THE COURT: Yeah, I mean, I guess the issue is -- I
2 mean, obviously we have not heard from the detective. I don't
3 know what he's going to say, but it's entirely possible,
4 depending on what he is going to say, that he has knowledge of
5 the -- that he has personal knowledge of the phone number not
6 through simply what the victim told him, but maybe he's called
7 that number, maybe he's --

8 MS. FELICIANO: Well, he would have gotten it
9 originally -- originally from the alleged victim is how he got
10 the number, so any then subsequent knowledge would be based on
11 that original hearsay. If he had called the phone company and
12 said what's her number, that is also -- that would also be
13 based on hearsay. If you looked at a phone bill, then we have
14 a best evidence issue. Regardless of how he got it, he got it
15 based on hearsay. Regardless if he used it later, it doesn't
16 change the original foundation for the information into some
17 sort of personal knowledge just because he called her number.
18 That's what we're objecting to.

19 THE COURT: Well, hang on. Just because you may have
20 originally gotten information through hearsay doesn't mean
21 that you can also -- that you can't also acquire personal
22 knowledge of it later on. It doesn't mean that every time you
23 refer to the same knowledge it's always -- it always relates
24 back to the hearsay.

25 But you know, obviously, again, we're talking in a

1 vacuum because I haven't heard from the detective, but it's
2 possible that he originally got the number through hearsay,
3 but then if you subsequently acquire personal knowledge that's
4 a different question. But I'm -- I understand -- let me --
5 what I understand your objection to be is you're saying that
6 even if I call a number, if I call your cell phone right now
7 and you answer, you're saying that that doesn't mean I
8 actually have personal knowledge of what your phone number is?

9 MS. FELICIANO: No. I'm saying the original basis
10 for your knowledge because what we're talking about is the
11 foundation to admit a piece of evidence.

12 THE COURT: No, I understand. Let's say --

13 MS. FELICIANO: And that -- that's --

14 THE COURT: Hang on. Let's say --

15 MS. FELICIANO: That's what I'm saying.

16 THE COURT: Let's say right now I ask you what your
17 phone number is and you tell me what your phone number is. I
18 now know your phone number only through hearsay. If I then,
19 however, five seconds later pick up my phone and dial that
20 number and your phone rings and you answer it and I have a
21 conversation with you, are you saying that even after that has
22 happened, I still don't have personal knowledge of your phone
23 number?

24 MS. FELICIANO: I'm saying that the original basis,
25 if we're talking about admitting a piece of evidence for his

1 knowledge because it's a foundational issue, is based on
2 hearsay. That's our objection.

3 THE COURT: Okay. Your response, Ms. Fleck?

4 MS. FLECK: Well, I mean, regardless of, you know --
5 I mean, I said what I already thought. It's -- it is -- it's
6 not an out-of-court statement offered for the truth of the
7 matter asserted once he has used that phone number, called the
8 victim's that's -- was used during the course of his
9 investigation. It's the numbers that were given to him that
10 he then went on and looked through the phone record in order
11 to see how many calls were placed to the specific number, and
12 you know, if bad comes to worse, then we'll call Roxana back
13 onto the stand for the limited question of what is your --
14 what was your phone number.

15 THE COURT: Well, I mean, you can certainly do that
16 if you want to, but I guess -- and obviously, again, we're
17 talking in a vacuum because I haven't heard from the
18 detective, but if he's used the phone and called her, that's
19 personal knowledge; however, if he only knows it through --
20 because somebody told him in an out-of-court statement made,
21 that's a different issue, but I don't know what -- you know,
22 which way it's going to go.

23 MS. FELICIANO: If he's used the phone and he's
24 called her, then that's information that was never turned over
25 to us. We have nothing supporting -- nothing in the discovery

1 that was provided to us supports that he ever used that number
2 to call her.

3 MS. FLECK: Hey, is she serious?

4 MS. FELICIANO: So --

5 THE COURT: How exactly did he ever retain -- obtain
6 a statement from her? I'm not sure --

7 MS. FELICIANO: He went to her school. He showed up
8 at her school unannounced.

9 MS. FLECK: So --

10 MS. FELICIANO: That's what was testified to.

11 MS. FLECK: -- we're supposed to somehow document it
12 every single time that a sexual assault detective ever
13 contacts a victim or a witness in a case in order to further
14 their investigation?

15 MS. FELICIANO: If there are statements made by her
16 with him that are not documented, yes, we are entitled to
17 those in discovery. If he was calling her and having
18 conversations with her and she's making statements, none of
19 that's ever been turned over to us. Yes, absolutely.

20 MS. FLECK: Okay.

21 MS. FELICIANO: Absolutely we are supposed to be --

22 MS. FLECK: Detective calling a victim --

23 MS. FELICIANO: -- provided that.

24 MS. FLECK: -- and setting up interviews or, you
25 know, calling to check --

1 THE COURT: Right. I mean, let's say --

2 MS. FLECK: -- follow up on something, that's just --

3 THE COURT: Let's say it's Ms. -- hang on. Hang on.

4 Let's say it's Ms. Fleck who calls the victim and says, hey,

5 can you come May -- you know, the trial's going on May 19th,

6 can you come in for a meeting? Are they then supposed to call

7 you and say, hey --

8 MS. FELICIANO: That's --

9 THE COURT: -- I just talked to the victim. She's
10 coming to the meeting.

11 MS. FELICIANO: That would technically be her
12 privilege work product. No, this is the sexual assault
13 detective. And from what we have and from what was testified
14 to, he didn't call her. He showed up unannounced at her high
15 school.

16 THE COURT: Right. The one time, but you know --

17 MS. FELICIANO: If there were other times he spoke to
18 her, we've never been told about that, and that would
19 absolutely be discovery that we have made a specific request
20 for and that we're entitled to.

21 THE COURT: All right. Well, I don't know if that
22 happened or not. I have no idea.

23 MS. FLECK: We have another problem too.

24 THE COURT: What's that?

25 MS. FLECK: Just as a housekeeping matter, we have

1 our -- the transcripts in order to -- the transcripts, and it
2 looks as though it wasn't a clean copy, so there is -- there's
3 one page that has some writing on it.

4 THE COURT: Oh. Can we white out that page and just
5 make another copy of that page?

6 MS. FLECK: That's what I was going to -- actually,
7 there's a few. He gave him a not clean copy, so -- well,
8 however we want to proceed. I mean, I guess we can -- I can
9 call Roxana for the limited purpose of that one question.

10 MS. FELICIANO: Well, the State can't reopen its case
11 once they're done with a witness just --

12 MS. FLECK: I haven't closed my case.

13 MS. FELICIANO: Reopen the witness once the witness
14 is done testifying, has been told you're free to leave, you
15 are no longer under oath and you can leave, just because the
16 State forgot to get out some information that they should have
17 gotten from that witness.

18 THE COURT: What rule is that that you can't recall
19 your own witness?

20 MS. FELICIANO: You can't recall your own witness
21 once the witness is finished testifying.

22 THE COURT: You can call any witness you want to.
23 Why can't -- if I wanted to, what rule or procedure or
24 evidence bars me from calling the same witness a hundred
25 times; other than the judge would get mad because you're

1 wasting his time, why can't you do that?

2 MS. FELICIANO: Who knows what discussions that she's
3 had? Who knows whether she's talked to the DAs about the
4 case? Who knows what's been gone on? This Court has told her
5 that she is free to leave and that she is no longer under
6 oath. Now that the State has forgotten and something that she
7 needed to get out from her, then they're going to reopen.
8 They can't do that.

9 THE COURT: Well --

10 MS. FLECK: First of all, it's one question, so it's
11 not like --

12 THE COURT: Well, hang on. Hang on.

13 MS. FLECK: -- I provided her --

14 THE COURT: All right. Hang on.

15 MS. FLECK: -- phone number.

16 THE COURT: All right. First of all, I mean, if any
17 of that happened, that would be a cross-examination issue, but
18 I don't know of any rule that says they can't recall their --
19 the same witness twice or any case. I mean, you have one I'm
20 happy to look at it, but I mean, it happens all the time.
21 It's their witness. They can call them whenever they want to
22 call them.

23 MS. FELICIANO: It doesn't happen all the time.

24 THE COURT: All right. Well, what are we -- where
25 are we on the detective?

1 MS. FLECK: He's here. We're just -- he's here.

2 THE COURT: All right.

3 MS. FLECK: I mean, I guess we'll just deal with it
4 once he testifies and --

5 THE COURT: Well, your --

6 MS. FLECK: -- if that's --

7 THE COURT: Well, what are we going to do about the
8 transcript? Do we have a clean copy we can use?

9 MS. FLECK: But I don't -- I can't make 12 copies
10 right now.

11 THE COURT: There's a copy machine right there.

12 MS. FLECK: Well, I don't --

13 THE COURT: I'm not sure what you're saying.

14 MS. FLECK: I just didn't want to take my time, but
15 maybe Nick can do it while the detective is testifying.

16 THE COURT RECORDER: I have a solution for the
17 monitors.

18 MS. FLECK: Oh.

19 THE COURT RECORDER: We can turn them off.

20 THE COURT: Oh, physically turn those two off.

21 MS. FLECK: Okay. Okay. Perfect.

22 THE COURT: Turn those three off, right.

23 MS. FLECK: Thank you.

24 THE COURT RECORDER: I think. Let's try it out real
25 quick.

1 THE COURT: Although the problem is, Michelle, while
2 you're hooked up, they may be able to watch on their monitor
3 what you're typing on your laptop.

4 MS. FLECK: On that side?

5 THE COURT: Yeah, I think so.

6 MS. FLECK: Okay. Well, then let's just not worry
7 about it.

8 THE COURT RECORDER: Okay.

9 MS. FLECK: Thank you. Actually, he brought up
10 another computer so I can type on that.

11 THE COURT: Oh, okay.

12 MR. FELICIANO: Can we have five, Judge?

13 THE COURT: Oh, yeah, sure.

14 MR. FELICIANO: The jury's back there, right?

15 THE COURT: Yeah, they're back in the jury room,
16 yeah.

17 MR. FELICIANO: All right. We're going to head out.

18 (Court recessed from 1:26 p.m., until 1:46 p.m.)

19 (Outside the presence of the jury.)

20 (Pause in proceedings)

21 THE COURT: All right. All rise for the entering of
22 the jury.

23 THE MARSHAL: All rise for the presence of the jury.

24 (Jury reconvened at 1:47 p.m.)

25 THE MARSHAL: Please be seated.

1 THE COURT: All right. Will counsel stipulate to the
2 presence of the jury?

3 MR. FELICIANO: Yes, Judge.

4 MS. FLECK: State stipulates, Your Honor.

5 THE COURT: All right. State, you may call your next
6 witness.

7 MS. FLECK: Thank you. State calls Detective Jaeger.

8 THE MARSHAL: Step up to the witness stand, remain
9 standing, raise your right hand and face the clerk.

10 RYAN JAEGER, STATE'S WITNESS, SWORN

11 THE CLERK: Thank you. Please be seated. Please
12 state your full name, spelling your first and last name for
13 the record.

14 THE WITNESS: My name is Ryan Jaeger, R-Y-A-N,
15 J-A-E-G-E-R.

16 THE COURT: Counsel, you may proceed.

17 MS. FLECK: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. FLECK:

20 Q Good afternoon, Detective. How are you
21 employed?

22 A With the Las Vegas Metropolitan Police
23 Department.

24 Q How long have you been with Metro?

25 A 14 and a half years.

1 Q And in what capacity?

2 A I'm currently a detective with the sexual
3 assault detail.

4 Q Okay. Before you were a detective with sexual
5 assault, were you a patrol officer?

6 A Yes, I was.

7 Q And how long did you do that?

8 A About ten years.

9 Q Did you go straight from patrol to sex assault?

10 A Yes, I did.

11 Q What kind of training and experience do you have
12 to work as a detective within sexual assault?

13 A Some of the training that I've had is the
14 preliminary sex crimes investigations class. I've had the
15 kinesic and interview the linguistic statement analysis class,
16 and I'm also one of the forensic interviewers that interviews
17 small children.

18 Q Okay. I want to direct your attention back to
19 December of 2009. Did you get a case forwarded to you at that
20 point in time reference Victim Roxana Perez?

21 A Yes, I did.

22 Q Now, as a detective within sexual assault, do
23 you normally -- are you normally the first to respond to a
24 crime scene and/or a victim, say, at the hospital or at
25 another location within town?

1 A No. We normally follow-up patrol. Patrol would
2 be the first response.

3 Q Okay. So victim will be identified, a possible
4 suspect, and then a case will get forwarded to you; is that
5 correct?

6 A That's correct.

7 Q And that happened in this case with Roxana
8 Perez?

9 A Yes, it did.

10 Q How is it that that case came to you?

11 A Patrol will take the preliminary report. Once
12 the report gets taken, it gets sent to whatever detail. It
13 got sent up to the sexual assault detail, and then my
14 supervisor grabbed it and would have assigned it to my case
15 assignment.

16 Q Okay. And what is the first thing that you do
17 when you get a sexual assault case, basically just the name of
18 a victim?

19 A Well, you read through the report just to get
20 the preliminaries, and then you call the victim, schedule an
21 appointment to talk to the victim.

22 Q Now, in this particular case, did you learn that
23 the allegations of abuse were sometime before the police got
24 involved?

25 A That's correct.

1 Q And about how far before Metro is -- was
2 involved did you know the abuse occurred?

3 A I don't know the exact time, but it was weeks.

4 Q That was a poorly worded question, but
5 basically, the last time of the abuse you learned was a few
6 weeks before Metro got involved?

7 A That's correct.

8 Q Now, normally when you get called out, say, to a
9 crime scene that the allegation has occurred within the last,
10 say, hours to days, do you recommend that the victim get a
11 medical examination?

12 A That's correct. If it's an acute case, which
13 happened within the last 72 hours, we will have the victim go
14 to UMC for an exam.

15 Q And why is that?

16 A 'Cause we're hoping to get any biological
17 evidence or any physical evidence that may be present on the
18 victim's body.

19 Q So while you described that, when you first come
20 into contact with a victim or get alerted to a victim's name,
21 one of the first things you'll do is contact that victim. If
22 you learn that the accusation or the assault with -- was
23 within that 72 hours, will you also quickly recommend or
24 ensure that they get medical treatment and get a sexual
25 assault examination?

1 A Yes. If it was within 72 hours, I would go to
2 them and I would bring them to the hospital to get the exam.

3 Q In this particular case with Roxana Perez,
4 knowing that the last allegation of abuse was some three to
5 four weeks before, was that something that you considered
6 doing?

7 A No, it was -- it was just too long. There would
8 be no chance of getting any evidence after such an extended
9 period of time.

10 Q Okay. So when you first got into contact with
11 Roxana Perez, what is it that you learned?

12 A I interviewed her at her school, and while
13 talking with her at her school, she told me that her mother's
14 boyfriend had basically been sexually abusing her for an
15 extended period of time.

16 Q You say that you talked to her at her school.
17 Do you remember when that was?

18 A I don't remember the exact date, but it would
19 have been morning hours.

20 Q Okay. Well, let me ask you this, and then I'll
21 show you your report to refresh your memory. First of all,
22 did you -- what did you do in order to get in contact with
23 Roxana and/or her mom before you interviewed her?

24 A On the cases that are old, the nonacute cases, a
25 lot of times I'll call the school district, find out where the

1 -- the child is going to school and I'll just show up to do
2 the interview. I found that if you call ahead and try to plan
3 the interview, this is going through over and over and over in
4 a victim's head and it's -- it's just easier on the victim if
5 it's just here I am, here's what I want to talk to you about,
6 and we do the interview. So it was just -- on that case, I
7 would have just the principal would have called her or a
8 counselor would have called her and said, hey, there's
9 somebody here that wants to talk to you.

10 Q Which school was she going to?

11 A Del Sol High School.

12 Q All right. And you said that you couldn't quite
13 remember the exact date. If I show you your report, may it
14 refresh your memory as to the date that you interviewed
15 Roxana?

16 A Yes, it would.

17 MS. FLECK: May I approach?

18 THE COURT: You may.

19 BY MS. FLECK:

20 Q Does that refresh your memory as to the day?

21 A Yes, it does.

22 Q And when was it?

23 A January 18th of 2010.

24 Q I'm sorry.

25 A Or January 8th of 2010, I'm sorry.

1 Q That's okay. So you said that you showed up at
2 her school. She was not expecting you then?

3 A No.

4 Q Where at Del Sol High School did you interview
5 Roxana?

6 A We try to avoid the principal's office or a
7 counselor's office. We try to pick neutral ground. There was
8 -- it was like a conference room to the back. It was more
9 like a break room to the -- the back of the dean's office, I
10 believe.

11 Q What was Roxana's demeanor or attitude when she
12 met with you that day?

13 A She was a little withdrawn at first. It -- it
14 took a while to get her comfortable to talk to me, which is
15 expected. I mean, I've never met her before. She's not ready
16 for the interview -- the conversation we're about to have.
17 But as the conversation went on, she opened up to me.

18 Q Okay. Did you have Officer Gibson or the first
19 responding officers' reports with you or had you been able to
20 review them before you met with Roxana?

21 A Yes, I had them with me and reviewed them.

22 Q So you had a preliminary idea of what the
23 allegations were?

24 A Yes.

25 Q Did you find that Roxana was even less

1 forthcoming with you during your interview than she had been
2 in her voluntary statement?

3 MS. FELICIANO: Objection. Vague.

4 MS. FLECK: Well --

5 THE COURT: What's your response?

6 MS. FLECK: She's either more forthcoming or less
7 forthcoming. I don't know how that's exactly vague.

8 THE COURT: Do you understand the question, what
9 she's presented?

10 THE WITNESS: Most people -- I do. Can I -- is it
11 okay if I answer?

12 THE COURT: If you understand the question, then
13 sure.

14 THE WITNESS: Most people when they have to write
15 something out --

16 MS. FELICIANO: And then objection. Nonresponsive.
17 She is asking specifically about Roxana and whether she was
18 more or less forthcoming, and he's beginning to talk about
19 most people.

20 THE COURT: Right. No, I understand. All right.
21 Here's what I'm going to do. The witness said that he
22 understands the question and understands the documents that
23 are referred to so the objection is over -- the vagueness
24 objection is overruled. But if you can reask the question and
25 focus him a little bit, all right?

1 MS. FLECK: I will.

2 BY MS. FLECK:

3 Q Having read the statement that Roxana wrote out
4 the night that Officer Gibson came to her home and then
5 interviewing her, did you find that she had given more
6 information in her written statement than she was willing to
7 give you in the interview?

8 A She -- she gave me more information in the
9 interview than what was on her statement.

10 Q Okay. But different information?

11 A That's correct.

12 Q All right. So once you interviewed her then,
13 did you do anything else with her there at the school in order
14 to further your investigation?

15 A She had several text messages that were on her
16 phone, and we photographed -- it was like a Blackberry or a
17 smart phone so we brought the messages up on the display of
18 the phone and we photographed the messages.

19 Q Okay. What relevance was there to you at that
20 time of those text messages?

21 A The -- the text messages, they were in Spanish
22 so I couldn't really read them, but Roxana said the text
23 messages were where are you, I need to know where you're at, I
24 want to meet you, and there was also an image of her
25 underwear. It was text to her.

1 Q And who were those text messages from?

2 A Guillermo.

3 Q How did you know at that time that they were
4 from the defendant?

5 A Roxanne told me that they were.

6 Q Okay. Did you identify a specific phone number
7 that those text messages were coming from?

8 A It was listed on the phone; that's correct.

9 Q And do you -- did you notate that in your
10 report?

11 A Yes.

12 Q Do you remember that today?

13 A I do not.

14 Q Okay. If I showed you your report, may that
15 refresh your memory?

16 A Yes, it would.

17 MS. FLECK: May I approach?

18 THE COURT: You may.

19 BY MS. FLECK:

20 Q Yeah. Just read this there, and let me know if
21 that refreshes your memory as to what his phone number was.
22 Does it?

23 A Yes, it does.

24 Q And what was it?

25 A 460, and you pulled it away kind of quick. I

1 couldn't see the last four.

2 The number was (702) 460-1292.

3 Q Okay. So that was the phone number, then, for
4 the defendant's phone, and additionally, did you get contact
5 information for -- or I guess the telephone number that the
6 defendant was texting and calling to being Roxana's phone?

7 A Roxana's phone, yes.

8 MS. FELICIANO: Objection. Hearsay. If we can
9 approach?

10 THE COURT: Sure.

11 (Bench conference)

12 MS. FELICIANO: So this is the issue that we had.
13 The question calls for --

14 THE COURT: Well, it kind of --

15 MS. FELICIANO: -- an answer based on hearsay.

16 THE COURT: -- depends on his answer. If he says he
17 knows it because Roxana told him, that's one thing. If he
18 says he knows it because he had the phone in his hand and was
19 operating the phone, then that's -- then that's not hearsay,
20 right?

21 MS. FELICIANO: No, the phone -- the way the question
22 was raised calls for hearsay. Did you get contact
23 information?

24 MS. FLECK: Well, first of all, that's not hearsay.

25 MS. FELICIANO: It calls for hearsay, which is also a

1 proper objection.

2 THE COURT: So --

3 MS. FLECK: I mean, it's exactly what we talked
4 about. It's he got the number, he used it, he then went on to
5 call her and her family at those numbers throughout the course
6 of this investigation.

7 THE COURT: All right. Why don't you -- why don't
8 you do this, all right, so the record is clear. She's made a
9 hearsay objection. Why don't you ask him how he knows her
10 phone number because, I guess --

11 MS. FLECK: But he's going to say 'cause she told it
12 to me --

13 MS. FELICIANO: Okay. So --

14 MS. FLECK: -- but then she went on to use it.

15 MR. GRAHAM: He can learn it.

16 THE COURT: I'm sorry?

17 MR. GRAHAM: I'm just going to say it doesn't matter
18 because he can learn it; and once he knows it for himself,
19 it's no longer hearsay 'cause it's his knowledge.

20 THE COURT: Well, I mean, the hearsay objection is
21 valid if the only way he knows it is because she said this is
22 my phone number.

23 MR. GRAHAM: Okay.

24 THE COURT: But if he knows it through other means,
25 such as he used the phone, he was handling the phone while

1 he's taking photos and all these text messages, that's not
2 hearsay because he's got the physical thing in his hand,
3 right?

4 MR. GRAHAM: And if he calls the number --

5 THE COURT: Right. If he's calling the number
6 subsequently, if he's doing all that kind of stuff, that's a
7 different thing, but right now her objection is your question
8 is so broad that he could answer it with hearsay. So maybe
9 you want to narrow the question down is what I'm suggesting.
10 'Cause technically she's right. Your answer could call for
11 hearsay, but you know, depending --

12 MS. FLECK: Well, the actual --

13 THE COURT: -- on his answer.

14 MS. FLECK: -- answer will be what his number is,
15 which is the hearsay, so me asking did you learn her number is
16 not hearsay. But he went on to use the number.

17 THE COURT: Right. Why don't you now say, do you
18 know what his phone -- what her phone number is? How do you
19 know that other than -- you know, do you know it through a
20 means other than that's -- other than she told you, something
21 like that.

22 MS. FLECK: Okay.

23 THE COURT: Did you handle the phone? Lay a
24 foundation so that the hearsay objection isn't --

25 MS. FLECK: Okay.

1 THE COURT: -- if you can. I don't know what his
2 answers are going to be, but --

3 MS. FLECK: Okay.

4 (End of bench conference.)

5 MS. FLECK: May I proceed?

6 THE COURT: You may.

7 MS. FLECK: Thank you.

8 BY MS. FLECK:

9 Q Okay, Detective. Just yes or no, throughout the
10 course of your conversation with Roxana, did you learn her
11 phone number?

12 A Yes, I did.

13 Q Besides learning her phone number from Roxana,
14 how did you -- how else did you go on to use or know her
15 number?

16 A She gave me her number and I called it several
17 times to talk to her throughout the investigation.

18 Q And was that her cellular number or her home
19 number?

20 A Her cellular number.

21 Q Okay. Also, through -- well, I guess we'll get
22 to that one later.

23 So you then went on to use her cellular phone number
24 in order to call her?

25 A That's correct.

1 Q And would you call her -- what purpose were you
2 calling her for?

3 A If I had any questions to ask of her or just to
4 give her a heads up on where the -- how the case was
5 progressing.

6 MR. FELICIANO: Can we approach, Judge?

7 THE COURT: You may.

8 (Bench conference)

9 MR. FELICIANO: We've never been provided any of this
10 information about these conversations with this detective.

11 MS. FLECK: What would they be provided?

12 MR. FELICIANO: He said he called her to talk to her.

13 THE COURT: Well --

14 MS. FLECK: You think that you're entitled to every
15 single conversation that a detective has with a witness or a
16 victim?

17 MS. FELICIANO: We are.

18 MS. FLECK: You are, really?

19 THE COURT: Hang on. I mean, I'm presuming he didn't
20 write a written report every time he called someone in the
21 family, right?

22 MS. FLECK: Of course not. I mean, he has a right to
23 call a victim and say here's what's going on with your case,
24 we haven't arrested anybody yet. Here's what's going on with
25 your case. We haven't, you know, talked to the defendant yet.

1 Here's what's going on with your case. We've talked to him
2 and now it's been set for here. Hey, I need to call you
3 because prelim's coming up. There's a million reasons.

4 THE COURT: All right. So what's the objection?

5 MR. FELICIANO: The objection is we -- it's discovery
6 violation 'cause we've never been provided --

7 THE COURT: Here's your problem. We haven't even
8 gotten to what they talked about in the phone call. The mere
9 fact that phone calls may have happened, maybe they didn't
10 even answer the phone. I mean, that's not in any way -- you
11 know, that's not discoverable, right? She hasn't even gotten
12 into what these phone calls were, when they occurred.

13 I mean, right now you're just generically saying any
14 phone call happened ever, which may have been described in the
15 report. I mean, you're a little premature is what I'm saying,
16 and the record now just says I had conversations. He didn't
17 say when, he didn't -- there could have been his conversations
18 in the report, but you don't even know that because you're
19 kind of jumping the gun.

20 MS. FELICIANO: There are no conversations in the
21 report. He just testified that he called her to talk to her
22 about the investigation.

23 MS. FLECK: Where --

24 MS. FELICIANO: There are no conversations in the
25 report.

1 MS. FLECK: Where are you -- what -- where are you
2 getting that a detective is not allowed to have any
3 conversations with a victim? Where are you getting that?

4 THE COURT: And -- all right. So your objection,
5 presumably your response to that is they're not saying that
6 you can't talk to them, just apparently, you're saying that
7 every time you talk to somebody you have to write it down and
8 give it to you guys; is that what you're saying?

9 MR. FELICIANO: I requested -- in my discovery
10 motion, I requested the file, notes, any type of
11 memorialization of any type of conversation.

12 THE COURT: Well, if he didn't memorialize it, then
13 there's nothing --

14 MS. FLECK: And you're never entitled to notes.

15 THE COURT: -- to give, right?

16 MS. FLECK: You always -- that was denied.

17 MS. FELICIANO: I know but some of his -- we
18 requested specific statements that were made [inaudible]. He
19 was investigating the case. It's not work product or
20 privileged. We're entitled to this information. It's
21 discoverable.

22 THE COURT: Again, here's the problem. All that's on
23 the record now is that conversations occurred. You don't know
24 that anybody made statements and so you're a little bit
25 premature because he hasn't said any statements were made by

1 anybody.

2 MS. FELICIANO: We're objecting --

3 MS. FLECK: Show me where in the discovery that --

4 MS. FELICIANO: We're objecting --

5 THE COURT: Hang on.

6 MS. FELICIANO: -- to the fact that there's a chance
7 that we have when he says I had conversations with her about
8 the case that we were never provided with. We're making our
9 -- we're -- our objection in a timely manner. If we wait
10 later, we're at risk of being [inaudible] information that we
11 haven't been told. We don't know what he's going to say
12 because we've never been told. The State's own witness; they
13 know.

14 THE COURT: All right. Let's do this.

15 MS. FELICIANO: The State knew that he had
16 conversations. They never told us.

17 THE COURT: Let's send the jury out. Hang on. Let's
18 send the jury out and I'll ask the detective a couple
19 questions, all right?

20 MR. FELICIANO: Okay.

21 (End of bench conference.)

22 THE COURT: All right, ladies and gentlemen. Here's
23 what we're going to do. I'm going to ask you to step back
24 into the jury room for just a couple of minutes and I'm going
25 to do something that needs to be put on the record outside the

1 presence, all right?

2 So it'll probably just be pretty quick, but during
3 this break, you're admonished that until you begin
4 deliberations, you are still under oath and have not been
5 discharged. Do not reach any conclusions about this case as
6 you've not heard all the evidence. Do not talk to anyone
7 about this case, do not investigate any facts of this case, do
8 not view any media press or Internet reports about this case.
9 Do not talk to anyone who may be involved in any way with this
10 case, do not discuss the facts of this case with each other.
11 Remember to wear your badges at all times and please leave
12 your notebooks on your chairs.

13 All right. Hang on.

14 (Jury recessed at 2:05 p.m.)

15 THE COURT: Okay. For the record, we're now outside
16 the presence of the jury; however, the detective is still on
17 the stand.

18 Detective, let me ask you a couple questions. Go
19 ahead and be seated [inaudible]. You've indicated that on
20 certain occasions you had telephonic contact with the victim
21 and her family, correct?

22 THE WITNESS: That's correct.

23 THE COURT: Do you remember how many conversations
24 they were?

25 THE WITNESS: I couldn't tell you how many. I mean,

1 I know --

2 THE COURT: Ballpark, a hundred, five?

3 THE WITNESS: Five or six.

4 THE COURT: Okay. Do you remember the approximate
5 dates in which those conversations occurred?

6 THE WITNESS: I would say between February and March.
7 I mean, I'm just guessing. I mean, I remember the mother was
8 pretty adamant, like the mom wanted him arrested the next day.

9 THE COURT: Okay. Hang on. So who did these
10 conversations occur with? Was it with Roxana or was it with
11 other --

12 THE WITNESS: With Roxanne and --

13 THE COURT: -- members --

14 THE WITNESS: -- her mother.

15 THE COURT: All right. Of the five or six, how many
16 were with Roxana and how many with her mom?

17 THE WITNESS: I would say two would be with Roxanne
18 and the rest would have been with her mother.

19 THE COURT: Okay. Do you remember approximate
20 durations of these phone calls? Were they long, were they
21 just -- were you providing updates or were you conducting
22 investigation?

23 THE WITNESS: There -- I wasn't providing any
24 updates. I was just letting her know the progress of the
25 investigation.

1 THE COURT: All right. Did you memorialize any of
2 these phone conversations?

3 THE WITNESS: I did not.

4 THE COURT: Were these phone conversations of such a
5 nature that your department policies would have required you
6 to memorialize them?

7 THE WITNESS: No.

8 THE COURT: And why is that?

9 THE WITNESS: They were just status updates.

10 THE COURT: What do you mean by that?

11 THE WITNESS: Well, everyone's got in their mind that
12 a case gets handled within a few -- a few days, and sometimes
13 these takes months, even weeks to handle, so I'm sure a few
14 weeks went by, the mom didn't hear from me, she would have
15 called and said what's going on with my case. I would have
16 called her back and said, well, you know, I have an
17 appointment scheduled to interview the suspect or we're
18 waiting for transcripts to be typed or the case has been sent
19 off to the DA's office, we're waiting for the approval.
20 They're just updates. They're not furtherance to the
21 investigation at all.

22 THE COURT: So is it accurate to say that these
23 conversations, the purpose of these conversations was for you
24 to provide information to them, or was it for you to obtain
25 more information from them?

1 THE WITNESS: Me to provide information to them.

2 THE COURT: Okay. All right. Mr. Feliciano, do you
3 have any questions?

4 MR. FELICIANO: No.

5 THE COURT: Ms. Fleck or Mr. Graham?

6 MS. FLECK: Nothing from the State. Thank you.

7 THE COURT: All right. Can you step outside for just
8 a minute then?

9 THE WITNESS: Yes.

10 THE COURT: Thank you very much. Can we stick him
11 out there? It might be -- no, let's not -- let's have him go
12 in the front. Let's have him go in the front, yeah. I'm just
13 trying to save him the long walk back and forth, but --

14 THE WITNESS: I need to walk.

15 THE COURT: No, go ahead.

16 THE WITNESS: It's been a long day.

17 THE COURT: Step outside.

18 THE WITNESS: I need the exercise.

19 THE MARSHAL: We can [inaudible] right there.

20 THE COURT: No, let's have him go back -- in case
21 anyone back there is having conversations about the case.
22 Yeah, just for a sec.

23 All right. The witness has now left the courtroom.
24 Mr. Feliciano, do you want to put your objection that you made
25 at the sidebar on the record?

1 MR. FELICIANO: Judge, I would just note that there
2 was contact between the detective in this case and the
3 complaining witness and her family, and we would ask -- we
4 would have asked that those would have been turned over. I
5 would have -- I would have asked in my discovery motion that
6 all be turned over and we would submit that that's a discovery
7 violation.

8 THE COURT: All right. Your response, Ms. Fleck or
9 Mr. Graham?

10 MS. FLECK: Well, I mean, they can ask for anything
11 that they want and it certainly doesn't mean that they're
12 entitled to it. I mean, say that there was some sort of a
13 discovery issue here. Where in NRS 174.235 are we supposed to
14 disclose every conversation that a sexual assault detective
15 has with a witness in a case or a victim in a case in order to
16 gather information in order, exactly like he said, to keep
17 people apprised of what was going on with the case.

18 It certainly isn't a Brady issue because it's not as
19 if there's been any disclosure that the witness -- or the
20 victim said something that was exculpatory that needed to be
21 turned over. It's not a Giglio issue. There's nothing
22 regarding impeachment, so I don't understand where on earth
23 the defense thinks that a phone call is something that needs
24 to be turned over to them. What contact within any of these
25 -- any of those kinds of phone calls would be discoverable to

1 them?

2 THE COURT: All right. You want to add anything, Mr.
3 Feliciano.

4 MR. FELICIANO: I've made my record, Judge.

5 THE COURT: All right. What we have here is an
6 objection based upon testimony by the detective that he had
7 conversations with the victim and her family that were not
8 included in the police report and, in fact, may have occurred
9 subsequently to the police report. I questioned the witness
10 myself outside the presence of the jury and I gave both
11 attorneys the opportunity to ask any questions that they
12 wanted to ask.

13 Based upon my questioning and the detective's
14 testimony, he did have a few conversations; however, his
15 characterization in response to my question was that these
16 conversations were for the purpose of providing status updates
17 to the family rather than for the purposes of obtaining
18 information from the family; in other words, they were not
19 investigative in nature, and it doesn't sound like he actually
20 obtained any information from the witnesses or from the
21 victim. He also testified there was no memorialization of
22 these conversations nor under the department policies was he
23 required to memorialize the conversations.

24 So it doesn't sound like there are any documents that
25 could have been turned over that weren't turned over. And the

1 fact that mere -- the conversations occurred that were not
2 actually investigative in nature I find is not a discovery
3 violation. Because they were not investigative in nature it
4 obviously doesn't sound like there was anything exculpatory or
5 potentially exculpatory in the conversations; and therefore,
6 there is no Brady violation, either, but you know, I think we
7 have made a decent record here.

8 So is there anything else that either side wanted to
9 put on the record?

10 MS. FLECK: No, nothing from the State.

11 MR. FELICIANO: No.

12 THE COURT: All right. Let's bring the detective
13 back in and put him on the stand and let's bring the jury back
14 in too, all right?

15 (Witness resumes the stand.)

16 All right, Detective. You understand you're still
17 under oath?

18 THE WITNESS: That's correct, Your Honor.

19 THE COURT: Let me ask you one question, which I
20 think was implied in the questions that I just asked you, but
21 just to close it off and make sure the record is complete.
22 During these five or six conversations that we were just
23 discussing, during any of them, did you actually obtain any
24 information pertinent to the investigation from either Roxana
25 or any other member of their family? Did they blurt anything

1 out or anything like that?

2 THE WITNESS: No.

3 THE COURT: Okay. All right. I appreciate it.

4 Let's bring the jury back in then.

5 THE MARSHAL: All rise for the presence of the jury.

6 (Jury reconvened at 2:14 p.m.)

7 THE MARSHAL: Please be seated.

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

10 MR. FELICIANO: Yes, Judge.

11 MS. FLECK: State does, Your Honor.

12 THE COURT: All right. You may proceed.

13 MS. FLECK: Thank you.

14 DIRECT EXAMINATION (Continued)

15 BY MS. FLECK:

16 Q Okay, Detective. I think we left off with me
17 asking if you'd had an opportunity to get Roxana's cell phone
18 information, and also her mother Rosa's home phone number.
19 And with Roxana, there were times, then, after January 8th
20 that you used that number to call her to set up interviews or
21 whatever?

22 A That's correct.

23 Q Okay. Do you remember that number off the top
24 of your head?

25 A I believe Roxana's cell number would be

1 426-9416.

2 Q Okay.

3 THE COURT: 94 what, I'm sorry?

4 THE WITNESS: 16.

5 BY MS. FLECK:

6 Q How about her home number? Do you remember that
7 number?

8 A 731-0162 or something. I'd have to look.

9 Q Okay. If I showed you her statement, may that
10 refresh your memory?

11 A It may.

12 Q Does that refresh your memory?

13 A That's correct.

14 Q What is it?

15 A 731-0612.

16 Q And those were the two numbers, then, that you
17 used to contact both Roxana and her mom Rosa once the
18 investigation started?

19 A That's correct.

20 Q Now, you mentioned that you looked through her
21 actual cell phone and saw a number of text messages. You went
22 on to photograph those?

23 A Yes, I did.

24 Q And how about the call log? Did you have an
25 opportunity, also, to look at the call log?

1 A Yes, we did.

2 Q Do you remember about how far back the call log
3 was -- how long it had stored?

4 A I believe the call log went back 30 days.

5 Q And how about text messages?

6 A The same, about 30 days.

7 Q With that cell phone information that you had of
8 the defendant's, did you do anything with that number in order
9 to see what other calls may have been placed or what the phone
10 history was, the call history was?

11 A With the --

12 Q With the defendant's cell phone number?

13 A I did not.

14 Q Okay. Did you ever go on to get cell phone
15 records of the defendant's?

16 A I did not.

17 Q Did you ask someone to do that?

18 A Yes.

19 Q Okay. And who was that?

20 A We have an investigative specialist that handles
21 all of that.

22 Q All right. But through your investigation, you
23 did ensure that cell phone records of the defendant's came to
24 you as part of your invest -- file?

25 A That's correct.

1 Q All right. Now, you mentioned that you
2 interviewed Roxana. Who, if anyone, did you also interview
3 pursuant to this case?

4 A I interviewed Roxana's sister.

5 Q And when was that?

6 A It would have been a few days after I
7 interviewed Roxana.

8 Q What's her sister's name?

9 A I'd have to look at the statement.

10 Q Okay. Perla, does that sound --

11 A Perla, that's correct.

12 Q Does that sound right? Okay.

13 A And then I interviewed one of her -- her
14 cousins, which was Janet.

15 Q And -- well, okay. First, her sister Perla,
16 where did you interview her?

17 A At her house.

18 Q And did you do a recorded statement with her?

19 A I did.

20 Q Okay. You said that you then went on to
21 interview someone named Janet. Was -- that's actual her aunt?

22 A That's correct.

23 Q All right. Did you interview any of her
24 cousins?

25 A I did not.

1 Q What did you do, then, in order to locate the
2 defendant?

3 A I wanted to get an address form so I think I
4 just checked with the power company to find out where he was
5 paying a power bill, and I learned that his address was on
6 East Sahara.

7 Q So then what did you do?

8 A I actually went to his house and knocked on his
9 door.

10 Q Was he home?

11 A No, he was not. His girlfriend was home.

12 Q Okay. So what did you do?

13 A I explained to the girlfriend that I needed to
14 talk to Guillermo. I left my business card with my number,
15 asked her to give the card to Guillermo when he got home, and
16 to ask him if Guillermo could give me a call.

17 Q Do you remember what day it was that you went to
18 his house initially?

19 A That I do not.

20 Q Again, if I show you your report, might it
21 refresh your memory?

22 A Yes.

23 Q Does that refresh your memory?

24 A Yes, it does.

25 Q Okay. When was it?

1 A February 18th.

2 Q So the middle of February you go to his house.

3 Did you, in fact, hear from the defendant that day?

4 A I did. He called me back. I wasn't able to
5 take the call, and he left a voice message.

6 Q What number did he ask you to call him back at?

7 A The -- it's on there. The 6 -- I can't remember
8 the --

9 Q 460-1242?

10 A That's correct.

11 Q And was that the same number that you had seen
12 in Roxana's phone?

13 A That's correct.

14 Q Did you set up an interview then?

15 A I actually called him back, spoke to him on the
16 phone, and we scheduled an interview.

17 Q When did you schedule that for?

18 A It was several days after I talked to him.

19 There was an extended time because with his work schedule and
20 with my work schedule it was -- I believe it was a few weeks
21 before he could come in --

22 Q Okay.

23 A -- for an interview.

24 Q And then where did he come to meet you?

25 A He came to our old investigative services

1 building at Oakey and Decatur.

2 Q When he came, did he come by himself, or did he
3 come with somebody else?

4 A He drove by himself.

5 Q And when he arrives at the office, just tell us
6 preliminarily what you do before you would interview a
7 defendant in a case -- or a suspect in a case like this?

8 A There's a receptionist that works at the front
9 desk when you arrive. He gave the receptionist his name, said
10 he was there for me. The receptionist gave me a call. I came
11 out and we walked him back -- he's got to get a visitor badge.
12 He signed for his visitor badge and we walked him into the
13 interview room for the interview.

14 Q And that interview, were you the only member of
15 law enforcement there, or was anyone else present?

16 A It was just me during the interview.

17 Q Do you remember what time of day it was that he
18 came to you?

19 A It would have been morning hours.

20 Q That interview, is that recorded and/or videoed?

21 A Both, digital and audio recorded.

22 Q All right. And before you start the interview,
23 do you Mirandize a suspect generally, and in this case did you
24 Mirandize the defendant?

25 A I did Mirandize the defendant, yes.

1 Q Did you do those Miranda rights from memory or
2 did you read them from a card?

3 A From my card.

4 Q From your card, okay. Do you -- do you know
5 them by heart?

6 A The right to remain silent, the right to the
7 presence of an attorney, if you cannot afford an attorney, one
8 will be appointed before questioning.

9 Q Okay. And so did you advise the defendant of
10 those rights?

11 A I did.

12 Q And did he indicate to you that he understood
13 those rights?

14 A Yes, he did.

15 Q And then did you continue on speaking to him and
16 recording his interview?

17 A Yes, I did.

18 Q All right.

19 MS. FLECK: And Judge, at this time I would like to
20 play the defendant's interview.

21 THE COURT: All right. And that was Exhibit, just
22 for the record, 23, I believe; is that correct, or is that not
23 -- I can't remember the exhibit number.

24 THE CLERK: 25 -- or no. The statement?

25 MS. FLECK: Has it been --

1 THE CLERK: It hasn't been admitted.

2 MS. FLECK: Okay.

3 THE COURT: Oh, yeah, you haven't.

4 MS. FLECK: Okay. Let me just play a portion of
5 this, and then we'll --

6 THE COURT RECORDER: Let me know when you're ready.

7 THE COURT: All right. Hang on. Just so the record
8 is clear, I think we ought to assign an exhibit number to it.
9 I know it was exhibited -- we admitted it in connection with
10 an --

11 THE CLERK: Proposed 27.

12 THE COURT: I'm sorry?

13 THE CLERK: Proposed 27.

14 THE COURT: All right. It'll be State's Proposed 27.

15 Now, for the record, Mr. or Mrs. Feliciano, do you
16 have an objection to the admission of the taped interview into
17 evidence as exhibit -- Proposed Exhibit 27?

18 MR. FELICIANO: Court's indulgence.

19 MS. FELICIANO: No objection.

20 THE COURT: All right. So it'll be -- Exhibit 27,
21 it's admitted without objection.

22 (State's Exhibit 27 admitted.)

23 THE COURT: All right. You may go ahead and play it
24 if it's ready.

25 MS. FLECK: Your Honor, have -- we have provided the

1 jury with copies of the --

2 THE CLERK: They're in the chair.

3 MS. FLECK: Oh, okay.

4 THE COURT: And for the record, I believe we
5 discussed this before, but we are agreeing by stipulation to
6 allow juries to have copies of the transcript while the
7 recording is being played, correct, Mr. Feliciano and Ms.
8 Feliciano.

9 MR. FELICIANO: I haven't seen what they have.

10 THE COURT: Oh, I thought you -- hang on. Hang on,
11 Cliff. I thought we had a chance to --

12 MS. FELICIANO: They had not shown it to us, no.

13 MS. FLECK: What?

14 THE COURT: Let's let them have a copy.

15 MS. FLECK: They don't have a copy of the defendant's
16 statement?

17 THE COURT: They're saying they haven't seen --

18 MR. FELICIANO: No, that copy.

19 THE COURT: Well, apparently, they haven't seen the
20 fresh copies that were just made --

21 MS. FLECK: Oh, okay.

22 THE COURT: -- I think is the question.

23 MS. FELICIANO: That's correct.

24 MS. FLECK: Yeah, I think it's the same as the one
25 that was provided to them, but [inaudible].

1 MR. FELICIANO: Sure. Okay.

2 THE COURT: Any objection?

3 MR. FELICIANO: No.

4 THE COURT: All right. Let's hand them out.

5 (State's Exhibit No. 27 played.)

6 BY MS. FLECK:

7 Q I believe it was after this interview, then,
8 that you went on to locate Roxana's Aunt Janet and her Cousin
9 Jeimi Leon and interview Janet?

10 A That's correct.

11 Q And you also met with Jeimi Leon; is that
12 correct?

13 A That's correct.

14 Q Then sometime after that interview, did you go
15 on to issue a warrant for arrest for the defendant?

16 A That's correct.

17 Q Okay. Thank you.

18 MS. FLECK: I'll pass the witness.

19 THE COURT: Cross-examination.

20 MS. FELICIANO: Thank you.

21 CROSS-EXAMINATION

22 BY MS. FELICIANO:

23 Q I want to talk to you about you -- the events
24 leading up to the interview with Mr. Renteria, so your
25 preinterview conversations.

1 A Okay.

2 Q You testified that you obtained a power
3 statement to determine where Mr. Renteria lived?

4 A There's investigative measures that we use. I
5 mean, there's several ways to find out where someone lives.
6 I'm just guessing at that. That's the standard, almost --
7 it's probably the easiest one to check to find out where
8 someone lives.

9 Q Okay. And you're familiar with, say, the
10 incident report that was prepared in this case?

11 A That's correct.

12 Q Which contains his address in there?

13 A That's correct.

14 Q And you listened to the 9-1-1 call?

15 A I don't know if I ever listened to the 9-1-1
16 call.

17 Q Okay. But you're familiar that his address was
18 contained in the incident report?

19 A That's correct.

20 Q And that was prepared in December of 2009?

21 A That's correct.

22 Q Okay. You testified you went to Mr.
23 Renteria-Novoa's home in February of 2010?

24 A That's correct.

25 Q And you didn't go there to arrest him?

1 A No.

2 Q You just went there to talk to him?

3 A That's correct.

4 Q He wasn't home?

5 A No. I knocked on the door, his girlfriend
6 answered, I introduced myself, told her that I wanted to speak
7 to him and left my business card.

8 Q And then he called you --

9 A That's correct.

10 Q -- a few hours later?

11 A Shortly after he called.

12 Q Left you a number?

13 A Yes.

14 Q You guys spoke, you said, later?

15 A I believe we played phone tag and then some time
16 later I talked to him.

17 Q Okay. And when you talked to him, you advised
18 him that Roxana had made some allegations against him?

19 A Yes.

20 Q And you then said come to my office, I want to
21 talk to you?

22 A I explained to him that it was important I get
23 his side of the case.

24 Q And he agreed?

25 A Yes.

1 Q I'll come to your office?

2 A Yep.

3 Q And so you made the appointment for him to come
4 to the office?

5 A That's correct.

6 Q During the time after you spoke to him on the
7 phone and before he came to your office, you didn't arrest
8 him?

9 A No. I didn't even look for him.

10 Q And when you talked to him and told him it was
11 important to get his side of the story, you told him, you're
12 going to be walking out of the interview room?

13 A Yes.

14 Q He knew coming down to the interview that he
15 could leave that interview room at any time?

16 A He knew he would be leaving. I mean, I'm...

17 Q Okay. And you assured him, give your side of
18 the story, you're not going to jail that day?

19 A Yes.

20 Q So then he came willingly to give the interview?

21 A That's correct.

22 Q And he gave it voluntarily?

23 A Yes.

24 Q Drove himself there?

25 A Yes.

1 Q And you testified that he was read his rights?

2 A Yes.

3 Q So he knew that he had the right to not speak
4 with you?

5 A Yes.

6 Q And that he had the right to counsel before
7 speaking to you?

8 A Yes.

9 Q And he told you I understand my rights?

10 A Sure.

11 Q And he still wanted to speak with you?

12 A He wanted to fix the problem; that's correct.

13 Q So he knew the allegations against him?

14 A Yes.

15 Q And he said I want to fix -- I want to fix the
16 problem?

17 A Yes.

18 Q And he was forthcoming with you?

19 A Somewhat.

20 Q You agree with me he immediately started talking
21 about Roxana?

22 A That's correct.

23 Q And some of the statements were a little unclear
24 when we heard them just now, so I just want to go over a
25 couple. He said her relation -- the relationship with her

1 changed when she got into high school?

2 A That's correct.

3 Q When she was around 15 or 16 years old?

4 A I believe so, yes.

5 Q That's when the deals started?

6 A I don't -- when what deal started?

7 Q When she started making the deals with him, he
8 said, for the iPod or the clothing or the shoes?

9 A I would assume so, yes.

10 Q And he told you he never forced her to do
11 anything?

12 A That's correct.

13 Q He said that again and again?

14 A That's correct.

15 Q And he also told you that he had got her
16 performing what appeared to be fellatio on Yahir?

17 A That's correct.

18 Q And she was around 14 or 15 at that time?

19 A I believe -- his story kind of changed during
20 the interview. It started out she was 14 or 15, and then if
21 you listen towards the end of the interview, he says she was
22 11 or 12 or 13 when she [sic] caught him [sic] with Yahir.

23 Q And he said that he didn't tell her mom?

24 A That's correct.

25 Q 'Cause he wanted to protect Roxana?

1 A He wanted to protect the -- the family makeup.

2 Q Okay. And then later, he said that after he
3 caught Roxana with Yahir, that's when she started making the
4 deals with him?

5 A And that's when his outlook on her changed, yes.

6 Q Right. And that's when she made a deal with him
7 to show him her breasts?

8 A That's correct.

9 Q And he said one time she showed him her vagina?

10 A It started out as one time, but everything was
11 kind of minimized. I mean, look -- look what I'm asking, it's
12 to be expected. It started out, no, no, nothing with the
13 vagina, then --

14 Q My question was: He said one time she showed
15 him her vagina?

16 A That's correct.

17 Q Okay. And he told you, I'm telling the truth?

18 A That's correct.

19 Q And he told you, I'll tell you this, I'll say
20 this in front of Roxana?

21 A I believe so.

22 Q And he told you, whatever you want?

23 A Uh-huh.

24 Q Is that a "yes"?

25 A To -- to an extent, yes.

1 Q And he disagreed with you when you suggested
2 that he was only going to tell Roxana's mom about Yahir if she
3 did sexual favors for him?

4 A That's correct.

5 Q He said that it was no, I said I'd tell to get
6 her to answer the phone?

7 A Yes.

8 Q And he denied that he ever made her touch his
9 penis?

10 A Yes.

11 Q Or that he ever had intercourse with her?

12 A Yes.

13 Q That he never asked her to perform fellatio on
14 him?

15 A That's correct.

16 Q Never put his mouth on her vagina?

17 A That's correct.

18 Q And at the end of his interview, you tell him,
19 is there anything I've forgotten to ask you?

20 A That's correct.

21 Q Anything you think would be important for me to
22 know?

23 A That's correct.

24 Q Get it off your chest?

25 A Yep.

1 Q And he said no, nothing else to tell?

2 A That's correct.

3 Q Talk to you about right after the interview.

4 He's not arrested following the interview?

5 A No, he's not.

6 Q And in fact, he's not arrested the next day?

7 A No.

8 Q Not arrested the next week?

9 A Nope.

10 Q Or the next month?

11 A Nope.

12 Q You testified that you had to prepare a

13 declaration of warrant?

14 A That's correct.

15 Q And that was done not in March of 2010?

16 A No.

17 Q Or April of 2010?

18 A Whatever the date is on it.

19 Q May 19th, 2010, sound about right?

20 A That's correct.

21 Q So that's almost two and a half months after he

22 came to talk to you at the police station?

23 A That's correct.

24 Q And at the time you prepared the warrant, you

25 knew where Mr. Rentaria-Novoa lived?

1 A I assumed he was at his house, so yes.

2 Q But you didn't go there to arrest him?

3 A No, I did not.

4 Q And you did not send other officers there to
5 arrest him?

6 A No.

7 Q Okay. He's not arrested until later?

8 A That's correct.

9 Q You testified that you're the lead detective on
10 the case?

11 A That's correct.

12 Q And you've worked for Metro for a little over 14
13 years?

14 A That's correct.

15 Q So obviously, part of your job is to investigate
16 allegations of sexual abuse?

17 A Yes.

18 Q And you testified that you have been trained on
19 how to investigate these allegations?

20 A That's correct.

21 Q And you've had some training on how to interview
22 witnesses?

23 A That's correct.

24 Q And you're trained on how to follow up on leads?

25 A That's correct.

1 Q And you're trained to verify information that
2 you're given?

3 A That's correct.

4 Q And through your training, you're taught that
5 it's important to make sure your investigations are thorough?

6 A Sure.

7 Q Accurate?

8 A Sure.

9 Q Complete?

10 A Yes.

11 Q And to collect evidence?

12 A That's correct.

13 Q And you have, in fact, investigated a lot of
14 allegations of sexual abuse?

15 A Yes, I have.

16 Q And you've interviewed a lot of alleged victims?

17 A Yes, I have.

18 Q And witnesses?

19 A Sure.

20 Q Collected a lot of evidence?

21 A That's correct.

22 Q Probably filled out a lot of police reports?

23 A One or two.

24 Q Okay. And it's important that you do your job
25 well?

1 A I would assume so, yes.

2 Q And you do that?

3 A Yes.

4 Q Now, in this case, after you talked to Mr.
5 Renteria-Novoa, he had given you some information that was
6 different from what you heard from Roxana?

7 A As far as?

8 Q As far as -- we'll start with he told you some
9 different information about Roxana and Yahir?

10 A He gave me the same story that Roxana did.
11 That --

12 Q So he told you that he had walked in on Roxana
13 performing what appeared to be fellatio on Yahir?

14 A That's correct.

15 Q Roxana told you that Mr. Renteria-Novoa walked
16 in on her performing fellatio on him?

17 A I believe she worded it, they were together, or
18 she minimized it, also, as I think they were making out or
19 something.

20 Q Okay. So Roxana tells you, I was making out
21 with Yahir?

22 A That's correct.

23 Q Mr. Renteria-Novoa told you, I caught them with
24 her -- what appeared to be her giving him fellatio?

25 A That's correct.

1 Q Okay. But you never followed up with Roxana
2 about what Mr. Renteria-Novoa had said about Yahir?

3 A As -- as far as?

4 Q You never asked Roxana, hey, did you perform
5 fellatio on Yahir?

6 A No, I would have never asked her that.

7 Q Okay. And you never asked Roxana if Mr.
8 Renteria-Novoa caught her performing fellatio on Yahir?

9 A Well, Roxana told me that he had walked in on
10 them, so it --

11 Q Walked --

12 A -- was assumed.

13 Q You assumed that she was performing fellatio on
14 Yahir?

15 A I'm sure there was more going on than what --
16 the way she described it, but she said she was caught with her
17 cousin, Yahir.

18 Q So when she told you that she was caught just
19 kissing, you assumed that she wasn't telling the truth?

20 A I -- yes, I assumed that.

21 Q You assumed that there was stuff that she was
22 keeping from you?

23 A Yes.

24 Q Not being completely forthcoming with you?

25 A Some stuff is difficult to talk about.

1 Q My question was: She was not being forthcoming
2 -- you assumed that she was not being forthcoming with you?

3 A Yes.

4 Q Now, Guillermo told you in his -- in his
5 interview that he had found Roxana making wrong with Carlos
6 and Manuel?

7 A That's correct.

8 Q And you told him I'm not dealing with those guy
9 -- or I'm sorry. You told him you are dealing with those
10 guys?

11 A That's correct.

12 Q But you were not?

13 A No.

14 Q And Guillermo told -- or Mr. Renteria-Novoa told
15 you, ask Roxana about Carlos?

16 A Yes.

17 Q Ask her about Yahir?

18 A Yes.

19 Q Ask her about Manuel?

20 A Yes.

21 Q But you didn't ever ask Roxana about Carlos?

22 A No.

23 Q And you didn't ever ask Roxana about Yahir?

24 A No.

25 Q And you didn't ever ask --

1 A Well, I talked to her about Yahir already before
2 the interview.

3 Q I'm asking, after your interview with Mr.
4 Renteria-Novoa, you did not ask Roxana about Yahir?

5 A No.

6 Q And you didn't ask her about Manuel?

7 A No.

8 Q And you, yourself, didn't interview Yahir?

9 A No.

10 Q Or Carlos?

11 A No.

12 Q Or Manuel?

13 A No.

14 Q And you testified today that you had talked to
15 Roxana a few times on the phone about the case?

16 A That's correct.

17 Q And you never asked her about any of the topics
18 that I just asked you, Mr. Renteria-Novoa asked you to follow
19 up on?

20 A That's correct.

21 Q Roxana also told you about -- strike that.
22 There was also an incident where Roxana mentioned she had been
23 at a cousin's daughter's birthday party?

24 A I --

25 Q Are you familiar with the written voluntary

1 statement she prepared --

2 A It's --

3 Q -- in this case?

4 A -- like 30 pages long. I mean...

5 Q I'm referring to the written voluntary
6 statement. Would it refresh your recollection to view a copy?

7 A Yes, it would.

8 Q Thanks.

9 MS. FELICIANO: Okay. If I may approach?

10 THE COURT: You may.

11 MS. FELICIANO: Thank you.

12 BY MS. FELICIANO:

13 Q Just read the last two lines of this page.

14 A (Witness complies.)

15 Q [Inaudible.]

16 A Okay.

17 Q So Roxana wrote that she was at a birthday party
18 with her family?

19 A That's correct.

20 Q And she was sitting near her mom and her uncles?

21 A That's correct.

22 Q And Mr. Renteria-Novoa came up to her --

23 MS. FLECK: Wait, Judge. I -- I'm going to object
24 because they didn't -- that's not a conversation that they
25 had. I don't know what she's -- that's all through Officer

1 Gibson. This isn't a conversation that this detective had
2 with Roxana.

3 THE COURT: Your response?

4 MS. FELICIANO: Yeah. He's familiar with the
5 statement, first of all. It's going to the investigation.
6 I'm going to follow up. I'm setting this up purely so that he
7 knows which conversation -- or what was in the statement, and
8 then I'm going to talk to him about the investigation that was
9 done following it.

10 THE COURT: All right. Can you approach?

11 MS. FELICIANO: Yes.

12 (Bench conference)

13 MS. FELICIANO: It was also --

14 THE COURT: Where's this going? I'm confused.

15 MS. FELICIANO: I'm just talking to him about they
16 were at a birthday party. She said the family was there. He
17 never followed up with the family. She's already testified to
18 it, so technically, it's not hearsay anyway because it's
19 already been testified to.

20 THE COURT: No, I understand.

21 MS. FELICIANO: But it's only to the investigation.

22 THE COURT: But I think her objection is, you know,
23 you're asking him about a statement that he didn't -- you
24 know, it wasn't his writing.

25 MS. FELICIANO: No, no.

1 THE COURT: But I'm just wondering where you're going
2 with it.

3 MS. FELICIANO: He's the lead detective --

4 THE COURT: [Inaudible] investigation.

5 MS. FELICIANO: -- and he's familiar with it since
6 the investigation.

7 THE COURT: Right.

8 MS. FELICIANO: Yeah.

9 THE COURT: Okay.

10 MS. FELICIANO: But it's -- yeah, that's --

11 MS. FLECK: I think she's talking to him about
12 conversations that he had with Roxana when he didn't --

13 MS. FELICIANO: No. No, no.

14 MS. FLECK: -- have that conversation with her.

15 THE COURT: No, I think she's asking, you know,
16 'cause he's testified that he -- yeah, he testified that he
17 looked into the -- to the statement -- through the
18 statements --

19 MS. FLECK: Yeah, she can't read the statement in.
20 She just needs to ask a question, then, about his
21 investigation.

22 MS. FELICIANO: It's -- I'm just --

23 MS. FLECK: You're saying what the --

24 MS. FELICIANO: I'm just setting it up.

25 THE COURT: Yeah.

1 MS. FLECK: -- statement --

2 MS. FELICIANO: I'm just saying she was at a party.

3 THE COURT: No, I understand.

4 MS. FELICIANO: Her family was there.

5 THE COURT: But don't read the statement. You can,
6 hey, did the statement say something about this, you know.

7 MS. FLECK: Or did you learn, not even did the --

8 THE COURT: Did you --

9 MS. FLECK: -- statement say --

10 THE COURT: Yeah, let's do it that way.

11 MS. FLECK: -- did you learn?

12 MS. FELICIANO: It's already been testified to and
13 it's not hearsay 'cause I'm not introducing it for the truth.

14 MS. FLECK: Yes, you are. You can't --

15 MS. FELICIANO: No, I'm --

16 MS. FLECK: You just can't read from the statement,
17 Amy.

18 MS. FELICIANO: I'm --

19 THE COURT: Hang on.

20 MS. FLECK: You can't do it.

21 THE COURT: Hang on, Amy. Go ahead.

22 MS. FELICIANO: I'm not introducing it for the truth
23 so it's not hearsay. It's going to the investigation. Plus,
24 it's already been previously testified to by Roxana so it's
25 in. I can get into it.

1 THE COURT: Right, right, right.

2 MS. FELICIANO: Right.

3 MS. FLECK: You can't -- she can't read from --

4 MS. FELICIANO: Yeah. No, it's been testified to.

5 MS. FLECK: -- the report.

6 THE COURT: All right. What is the sentence? I
7 haven't even seen the sentence yet.

8 MS. FELICIANO: I can just tell him she was at a
9 birthday party with her uncles and he didn't follow up on that
10 if that would make everybody's life easier. I was just trying
11 to be clear so that --

12 THE COURT: Yeah. No, the problem is -- yeah, that's
13 easier. I had -- I don't have a copy of the statement so I
14 actually don't know what sentence you're talking about, but if
15 that's -- do you have an objection if she raises -- if she
16 just raises it that way?

17 MS. FELICIANO: I was just trying to be --

18 MS. FLECK: That's fine. I just --

19 MS. FELICIANO: -- precise so that --

20 MS. FLECK: -- don't want her --

21 MS. FELICIANO: -- he didn't --

22 THE COURT: No, I understand.

23 MS. FLECK: Yeah, okay. That's fine.

24 THE COURT: All right.

25 MS. FELICIANO: Thanks.

1 (End of bench conference.)

2 BY MS. FELICIANO:

3 Q So there was an incident where Roxana was at a
4 birthday party with her family?

5 A That's correct.

6 Q And Mr. Renteria-Novoa had come up to her in
7 front of her family --

8 A That's correct.

9 Q -- and threatened her?

10 A That's correct.

11 Q And you never followed up with any of her family
12 about this?

13 A I did not.

14 Q Never talked to any of her uncles about the
15 incident?

16 A I did not.

17 Q Never questioned her mom about the incident?

18 A I did not.

19 Q And you testified that when you first talked to
20 Roxana at the high school, she was uncomfortable?

21 A That's correct.

22 Q And then you tried to make her feel comfortable?

23 A That's correct.

24 Q And you want to make her feel comfortable so
25 that she gives you all relevant information?

1 A That's correct.

2 Q And at the end of her interview, did you give
3 her your card?

4 A I did.

5 Q Okay. And so you gave her your card and said,
6 if there is anything that you've forgotten to tell me, give me
7 a call?

8 A Anything that you need, give me a call, yes.

9 Q Anything you want to add to your statement, give
10 me a call?

11 A That's correct.

12 Q Now, you also testified that it was easier for
13 you to just show up at the high school to interview the
14 alleged victim?

15 A That's correct.

16 Q Because they wouldn't be expecting you?

17 A That's correct.

18 Q And is part of that so that they're not, say,
19 preparing what they're going to say?

20 A They also have a life that's going on outside of
21 the -- the case. Think of when you were in school and you had
22 a test, you were thinking about this big test all day, all
23 day, it's going to disrupt the whole flow of her life, so it's
24 best just to pop in so she's going about her regular day.
25 She's -- kids are more relaxed at school, it's a safe spot, so

1 I just showed up to do the interview.

2 Q And part of that, too, though, is to get a more
3 accurate interview?

4 A That's correct.

5 Q You testified that typically sexual assault
6 examinations are only done if the incident is reported within
7 72 hours?

8 A That's correct.

9 Q But you'd agree with me that there are cases
10 where the incident has occurred more than 72 hours in time and
11 a sexual assault examination is conducted?

12 A The technology is constantly changing. Since
13 this was written, it's been extended to five days, but it's
14 kind of hit or miss. There's no exact, yes, we can get
15 evidence, no, we can't.

16 Q Okay. But my question was: You'd agree with me
17 there are cases where, say --

18 A Over 72 hours?

19 Q Yes.

20 A Rare, but yes.

21 Q Okay. And as part of the investigation in this
22 case, there was no DNA collected?

23 A That's correct.

24 Q No other biological evidence collected?

25 A That's correct.

1 Q No clothing impounded?

2 A That's correct.

3 Q No comforter impounded?

4 A That's correct.

5 Q No sheets or blankets impounded?

6 A That's correct.

7 MS. FELICIANO: Court's indulgence.

8 THE COURT: Sure.

9 MS. FELICIANO: Nothing further.

10 THE COURT: Anything further?

11 MS. FLECK: Yes, thank you.

12 REDIRECT EXAMINATION

13 BY MS. FLECK:

14 Q I'll leave off where Ms. Feliciano -- or pick up
15 where Ms. Feliciano left off regarding the sexual assault
16 examination. You said that unless it's an acute case, which
17 would be within that 72 hours, you don't normally send someone
18 to get a sexual assault examination?

19 A That's correct.

20 Q So in this case, you spoke with Roxana Perez on
21 January 8th of 2010. She related that the last time she was
22 touched by the defendant was November of 2009; is that
23 correct?

24 A That's correct.

25 Q So roughly two months before?

1 A That's correct.

2 Q Additionally, did Roxana Perez ever disclose to
3 you that there was any penis-vagina intercourse which include
4 ejaculation?

5 A No, she did not.

6 Q Two months later, touching that Roxana described
7 would you ever expect to find any kind of DNA in a case like
8 that?

9 A Even if there was, ejaculation or trauma to the
10 inside of the vagina after two months, that would all be gone.

11 Q Okay. So let's go, then, with both scenarios.
12 If there was penile-vaginal intercourse two months before,
13 would you ever expect to find any kind of DNA, any seminal
14 fluid, anything?

15 A After two months, no.

16 Q Okay. People take showers, I assume, bathe, all
17 kinds of things?

18 A Yes.

19 Q Okay. Additionally, the sexual acts that were
20 described by Roxana in January, even if she had gone to a
21 sexual assault examination within that 72 hours of that
22 interview, would you expect any kind of findings given that
23 the allegations were touching with fingers, kissing, touching
24 breasts, anything like that?

25 A We might be able to get some, but I would have

1 to say I doubt we would get anything.

2 Q Okay. Again, part of your job is to find the
3 truth, find the defendant. If you thought that a sexual
4 assault examination would do any good, would you obviously
5 have sent her to do that?

6 A Yes.

7 Q Okay. So Ms. Feliciano also talked to you a
8 little bit about the defendant's statement, and I believe she
9 said that he was her -- her word was he was forthcoming with
10 you?

11 A Somewhat, yes.

12 Q Okay. That he told you that he was telling the
13 truth?

14 A That's correct.

15 Q Now, that's what he said to you, right? It
16 certainly didn't mean he was, but that's what he told you?

17 A That's what he said, yes.

18 Q Okay. So he told you that the deal started when
19 she was 15 or 16; is that right?

20 A That's correct.

21 Q But he also at some point through the interview
22 told you that the deal -- or that he started touching Roxana
23 right after he caught her with Yahir?

24 A Yes.

25 Q And he also told you that he caught you with

1 Yahir when she was 12 years old?

2 A That's correct.

3 Q So the touching started when she was 12 years
4 old?

5 A That's correct.

6 Q Okay. So you would agree that that wasn't
7 exactly forthcoming when he originally told you that the deal
8 started at 14 -- or 15 or 16?

9 A It was a minimization in his statement, and he
10 was --

11 Q So slowly tidbits of truth would come out
12 throughout the interview?

13 A That's correct.

14 Q Additionally, he told you that he only -- he
15 only saw her, he only saw her naked body; is that right?

16 A That's correct.

17 Q And then later in the interview, he told you he
18 actually kissed her breast?

19 A That's correct.

20 Q So you would agree he actually wasn't
21 forthcoming when he told you that --

22 A That's correct.

23 Q -- he just saw her?

24 A Yes.

25 Q He told you when you asked him if he mass -- if

1 he masturbated, I believe his answer was, never; is that
2 right?

3 A That's correct.

4 Q And then do you remember later in the interview
5 you asked him again and he said once?

6 A That's --

7 MR. FELICIANO: I'm going to object to leading --

8 A -- correct.

9 MR. FELICIANO: -- at this point, Judge.

10 MS. FLECK: Well --

11 THE COURT: All right. Hang on. It's a valid
12 objection. Can you rephrase your questions?

13 MS. FLECK: Well, Judge, the problem is that the
14 defense has picked out parts of the interview, and so I'm just
15 putting into context. When Ms. Feliciano says that he told
16 her that, you know, he never masturbated, well, then he goes
17 on to say that he did once. So I'm just pulling the actual
18 statements out of the interview and putting it all into
19 context of what was said.

20 THE COURT: Well, I mean, the other way you can do it
21 is you can ask the detective if he remembers incidents when he
22 wasn't forthcoming and let him describe them rather than you
23 list them.

24 MS. FLECK: Okay. Well, without having his
25 transcript, I don't know that he will, but I'll try to do a

1 better job of that.

2 BY MS. FLECK:

3 Q Okay. Do you remember Ms. Feliciano recalling
4 for you within the interview where the defendant said that he
5 only ever saw her naked?

6 A When the interview started out, he admitted to
7 only seeing her naked.

8 Q Okay. What, if anything, did he go on to tell
9 you that he actually did to her vagina or to her body?

10 A As that aspect was revisited during the
11 interview, it changed somewhat to where he masturbated in the
12 room with her, to he actually kissed her breasts. And then he
13 actually -- it changed to he touched her vagina one time, but
14 outside the clothes.

15 Q Okay. And he told you that -- or Ms. Feliciano
16 referenced a part where the defendant said that he never put
17 his mouth on her vagina; is that correct?

18 A That's correct.

19 Q Okay. Regarding him having sex with her, what
20 did he tell you about why they didn't have sex?

21 A 'Cause it wouldn't be right. He looked at her
22 as a daughter.

23 Q Okay. And did he also tell you that he tried,
24 but --

25 A She wouldn't let him.

1 Q -- she wouldn't? Okay. So would you summarize
2 the interview as the defendant actually being forthcoming with
3 you at all?

4 A No.

5 Q Regarding this incident with Yahir, Ms.
6 Feliciano referenced that the defendant told you that he
7 walked in and he saw what he believed to be her performing
8 fellatio or about to perform fellatio?

9 A That's correct.

10 Q And you agreed that that was what was said?

11 A That's correct.

12 Q Do you remember that he also went on to say that
13 where you said she was giving him a blow job, and then the
14 answer is, well, something like that. I can't be sure because
15 when I opened the door it was -- I found him in that position.
16 I mean, I found her and him just covered with a blanket, the
17 same blanket maybe her or -- so I don't know what happened
18 behind this blanket?

19 A That's correct.

20 Q So in fact, the defendant had no clue what was
21 actually happening because Yahir and Roxana were covered up?

22 MR. FELICIANO: I'm going to object to leading again,
23 Judge. And Counsel's testifying.

24 MS. FLECK: Well, again, it's --

25 THE COURT: Well, hang on. Hang on. All right. I

1 mean, the other way to do it is you can -- I mean, there's no
2 dispute over what's in the transcript. The other way to do it
3 is you can show him the transcript and have the detective read
4 it, but we're going to get to the same place so I'll let that
5 one go.

6 All right. Go ahead and answer.

7 MS. FLECK: Thank you.

8 BY MS. FLECK:

9 Q So he actually did not have any idea what had
10 happened between Roxana and Yahir because, as he said, it was
11 behind a blanket?

12 A That's correct.

13 Q So him telling you that the fellatio was just
14 his words?

15 A That's correct.

16 Q Okay. When you heard about Yahir or the
17 defendant throughout, these words Carlos or Manuel, I mean,
18 what was your main concern while you were interviewing this
19 defendant?

20 A When -- when the case comes in, my main concern
21 was what happened with her and Guillermo. That's -- that's
22 what she's reporting to the police. She's not reporting these
23 other incidents with family members. She's reporting the
24 incident with her and her mom's boyfriend, Guillermo.

25 Q Okay. And did -- I mean, the defendant at this

1 point in time is, what, 48 years old?

2 A That's correct.

3 Q The -- Yahir was a teenager?

4 A That's correct.

5 Q And it was four years before?

6 A That's correct.

7 Q So fair to say that your main concern is a
8 48-year-old man touching and molesting a 12- to 16-year-old
9 girl and not two young kids playing footsie under a blanket?

10 A That's correct.

11 Q Okay.

12 MS. FLECK: Nothing further.

13 THE COURT: Any recross?

14 MS. FELICIANO: No recross.

15 THE COURT: All right. Is the witness free to go?

16 MS. FLECK: Yes.

17 THE COURT: All right. Thank you, Detective, for
18 your testimony.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: State, your next witness.

21 MS. FLECK: May we approach?

22 THE COURT: You may.

23 (Bench conference)

24 THE COURT: Is that your last witness?

25 MR. GRAHAM: I'm sorry. What?

1 THE COURT: Is that your last witness?

2 MR. GRAHAM: Yeah.

3 THE COURT: Okay. And are you guys calling anybody?

4 All right. We're going to need to go over the jury
5 instructions so I'm going to send the jury on for like maybe
6 15 minutes or so, all right, as soon as we formally, you know,
7 they rest and you rest and all that. Hang on. Let's get
8 Michelle over here.

9 Any more witnesses?

10 MS. FLECK: No.

11 THE COURT: All right. So you're resting?

12 MS. FLECK: Yes.

13 THE COURT: All right. We'll go back on the record,
14 you can rest. I think you guys are just going to rest, right?

15 MR. FELICIANO: Yes.

16 THE COURT: All right. And then I'll send the jury
17 out for like 15 minutes. We've got to finish out the jury
18 instructions, but we'll -- I mean, we're pretty close to the
19 end here.

20 MS. FELICIANO: We need -- sorry to interrupt you.

21 THE COURT: I'm sorry. Go ahead.

22 MS. FELICIANO: We need to get those statements
23 collected from them.

24 THE COURT: I can't hear you.

25 MS. FELICIANO: We need to get the statements

1 collected from them.

2 THE COURT: Oh, yeah, you're right. We were going to
3 do that. Let's get -- let's get -- 'cause Joe doesn't know
4 that, I don't think. Let's -- so let's get him to do that.

5 MS. FLECK: Here's the problem. I mean, by the time
6 we do instructions and read, it's going to be 4:30.

7 THE COURT: Right.

8 MS. FLECK: I just --

9 THE COURT: Well, not necessarily, 'cause -- well --

10 MS. FLECK: Yeah, we've got to argue those
11 instructions, and by the time we read everything -- I mean, we
12 will -- the opening will -- the closing will be 40 minutes,
13 probably, at least, right?

14 MR. GRAHAM: Yeah.

15 MS. FLECK: How long will yours be?

16 MR. FELICIANO: It won't be more than half an hour, I
17 don't think.

18 THE COURT: Well, I mean, you --

19 MS. FLECK: They have to come back to deliberate
20 tomorrow anyway.

21 THE COURT: Yeah, that's fine, but at least let's
22 give -- let's give this -- you know, give the case to them and
23 they can, you know, come back in tomorrow. I mean, they don't
24 have to like -- you know, just --

25 MS. FLECK: Here's the thing. I just -- when it's --

1 when it's that late in the day and it's like 5:00 o'clock and
2 they're sitting there listening to the most important part of
3 our case, you know, it's like -- if we can even instruct them
4 like we did opening, instruct them and close first thing in
5 the morning, but I don't -- I don't want them listening to my
6 rebuttal at 6:30 at night.

7 What if we do everything and instruct and then start
8 our closings at 9:00 in the morning?

9 THE COURT: Well, I mean --

10 MS. FLECK: Since they have to come back tomorrow.

11 THE COURT: I don't know if it's going to take half
12 an hour with the jury instructions, honestly. When would --
13 well, I mean, my inclination, frankly, and we even talked
14 about this the other day, was to, you know, kind of stay late
15 and kind of get -- at least get the case to them and then they
16 can come back fresh and just deliberate. I understand what
17 you're saying, but I mean, my concern is, you know, having --

18 MS. FLECK: Okay.

19 THE COURT: Is how much attention are they going to
20 pay --

21 MS. FLECK: Let's do it.

22 THE COURT: -- on a Friday before a three-day
23 weekend. That's -- I mean, from Day 1, I said --

24 MS. FLECK: Yeah.

25 THE COURT: -- you know, juries -- you know, I've

1 been -- I've done -- I've been in a strange position of having
2 done like five trials or four trials --

3 MS. FLECK: Okay.

4 THE COURT: -- on a holiday weekends, and they
5 just --

6 MS. FLECK: I just hate it when they're just like --

7 THE COURT: -- they just hate it.

8 MS. FLECK: -- out.

9 THE COURT: Yeah, they just come in here, they do a
10 five-minute verdict and they go out 'cause they just want to,
11 you know, go home for the weekend, and that's why I'd rather,
12 you know, have them stay a little bit later tonight.

13 MS. FLECK: Well, maybe --

14 MR. FELICIANO: Okay.

15 MR. GRAHAM: Well, I think didn't we just -- I mean,
16 we asked them and none of them had plans. That was like one
17 of the key things.

18 MS. FLECK: Why don't we do this?

19 THE COURT: No, no. No. Remember, when I asked them
20 the [inaudible] questions, you have any times that can't be
21 changed, like tickets --

22 MR. GRAHAM: Oh, I see.

23 THE COURT: I said things like if you're going to
24 drive in to California, you can drive a little bit later in
25 the day, you know, that doesn't count as something [inaudible]

1 jury. That doesn't mean they don't have plans.

2 MS. FLECK: Why don't we settle instructions and then
3 see how late it is and then we'll -- we can ask --

4 THE COURT: Right.

5 MS. FLECK: -- because they have to come back
6 tomorrow anyway.

7 THE COURT: Right.

8 MS. FLECK: If I didn't -- believe me, I don't want
9 to come to work tomorrow, but I just -- I hate that feeling
10 where everyone's like, you know, in the middle of closings.

11 THE COURT: Yeah, but I mean, my concern, like I said
12 from the beginning, is it's either that or they come back in
13 the Friday before Memorial Day when maybe they had -- you
14 know, they were going to drive out and now the kids are like,
15 well, I thought we were -- you know what I mean? I just --

16 MS. FLECK: Uh-huh.

17 THE COURT: It's happened to me too many times and it
18 just -- you get jurors who just don't even -- another thing is
19 they're not going to want to stay and talk with you if you
20 wanted to talk with them afterwards 'cause they're like I've
21 got to hit the road.

22 MS. FLECK: Well, let's see how long it's going to --
23 how -- let's see how long all that lasts and then --

24 THE COURT: Yeah, let's see.

25 MS. FLECK: -- we'll see.

1 THE COURT: Let's just -- all right. I'll send them
2 out for like 15 -- a little while and we'll get started. All
3 right.

4 (End of bench conference.)

5 THE COURT: All right. State, do you have any
6 additional witnesses?

7 MS. FLECK: We do not, Your Honor. Thank you. And
8 the State will now rest our case.

9 THE COURT: All right. Mr. or Mrs. Feliciano, is
10 there any evidence or witnesses that you would like to
11 present?

12 MR. FELICIANO: Defense rests.

13 THE COURT: All right. Ladies and gentlemen, that
14 concludes the presentation of evidence. What we're going to
15 do now, we've been going for a little bit over an hour. Let's
16 take a break. This one will be a little bit longer 'cause
17 there's some paperwork that we need to get in order while you
18 guys are out on your break. So we'll make this -- it's
19 probably going to be 15 to 20 minutes. Let's try for 15.

20 You are admonished that until you begin
21 deliberations, you are still under oath and have not been
22 discharged. Do not reach any conclusions about this case. Do
23 not talk to anyone about this case, do not investigate any
24 facts of the case, do not view any media press or Internet
25 reports about this case, do not talk to anyone who may be

1 involved in any way with this case, do not discuss the facts
2 of the case with each other. Remember to wear your badges at
3 all times around the courthouse. Please leave your notebooks
4 and the transcripts on your chairs. All right? And Joe will
5 take you someplace right now.

6 (Jury recessed at 3:29 p.m.)

7 THE COURT: All right. We're still on the record
8 outside the presence of the jury. Was there anything that
9 either side wanted to put on the record?

10 MS. FLECK: Nothing from the State.

11 THE COURT: All right. Let's go off the record very
12 quickly.

13 (Court recessed from 3:30 p.m., until 3:59 p.m.)

14 (Outside the presence of the jury.)

15 THE COURT: All right. Back on the record, State
16 versus Guillermo Renteria-Novoa, C268285. We are outside the
17 presence of the jury, and we have just settled some jury
18 instructions but there were objections that I think both sides
19 wanted to put on the record.

20 Ms. Fleck, what did you want to put on the record, if
21 anything?

22 MS. FLECK: Well, I object to the -- that multiple
23 sex act instruction coming in at all. I think it's going to
24 confuse the jury. I don't think that -- I think in order to
25 get a jury instruction in, there has to be some evidence that

1 it's relevant to your case, and I don't see how going through
2 this case, going through the information, going through the
3 entire testimony of the victim, I do not understand why on
4 earth this instruction would come in. There is not one
5 allegation of a sexual offense that can be considered
6 redundant per Crowley. The only reason that that -- the only
7 thing that that stands for is that you cannot charge a
8 defendant with -- or convict him of something like lewdness,
9 which is a prelude to a sexual penetration.

10 So I don't -- I really don't understand why that
11 would come in and I think it's only going to confuse the jury
12 and it's going to allow the defense -- I mean, if they want
13 it, then that means that they want to be able to argue it; and
14 if they're going to be arguing it, then that means that
15 they're going to be arguing a misstatement of the law because
16 if they want the instruction in to argue, they're going to get
17 up before the jury and say you can't convict him of, you know,
18 all of these sexual assaults and lewdnesses that come and
19 arise out of the same incident because of this instruction.
20 Well, then they will be telling the jury something wrong and
21 they will be misguiding the jury and they will be purporting
22 something that isn't the law, so why would it come in? I
23 mean, why would this instruction come in?

24 THE COURT: All right. Your response?

25 MS. FELICIANO: Well, Judge, as we just went through,

1 it is a correct statement of the law. There is at least
2 slight evidence that these were -- could have been part of the
3 same encounter. The jury should be instructed -- where it's
4 part of our theory the jury can be instructed correctly. It's
5 a correct statement of the law.

6 MS. FLECK: Well, see that's the point. It's not
7 that it's part of the same encounter. It's that it's part of
8 the same episode. And under Crowley, episode meaning
9 precursor, prelude to, so exactly what I'm saying. I mean,
10 it's a correct statement of the law. Well, there's a lot of
11 correct statements of the law and it certainly doesn't mean
12 that it comes into our jury instructions for the defense to be
13 able to argue to a jury when it's not relevant in this case,
14 and she -- I don't think that she would be able to point to
15 one sexual act that was described by the victim in this case
16 that this would apply to; not one that she could point to it
17 and say that is and could be considered a redundant act such
18 that Crowley would apply, not one.

19 So she will be arguing something that is not the law,
20 which will then go on to confuse the jury, and then I have to
21 get up somehow and rebut something that -- I mean, that's --
22 why would I -- why should I have that burden to have to rebut
23 something that has now become an issue because there is a --

24 THE COURT: What's the -- hang on a second. Let me
25 ask you a question now that I'm looking through the second

1 amended information. The way you have these counts arranged,
2 all right, you have Count 1, sexual assault with a minor under
3 the age of 14; Count 2, same thing. Then you have Count 3,
4 lewdness. Then in Count 4, you go back to sexual assault with
5 a minor under the age of 14, then you have two more, and then
6 you go back to lewdness. In fact, you have two lewdnesses in
7 a row. What's the sequence of these counts? How do they
8 relate to each other?

9 MS. FLECK: The sequence of the counts is purely
10 sequential in terms of the time line. So it's the first four
11 are -- the first four are when -- because of the age, we had
12 to do it -- okay. The first four being sexual penetration,
13 anus and then cunnilingus and then rubbing her breasts, body,
14 genital area with his hands, and then fingers in vagina. So
15 it's -- that's at the first house. Those are at the first
16 house.

17 Then we go on to the second house, which is -- or I'm
18 sorry. To the second incident at that house where it's the
19 same thing, but what he added was fingers in the anal opening.
20 So there's rubbing, touching of breasts, licking of breasts,
21 fingers in vagina, fingers in anal opening, open and gross
22 cunnilingus and tonguing anus.

23 THE COURT: All right. So --

24 MS. FLECK: So again --

25 THE COURT: -- the -- all right. So counts --

1 MS. FLECK: So the one -- okay. So it's going to be
2 Count 3, which is rubbing the breasts.

3 THE COURT: Right. Okay.

4 MS. FLECK: And we're going to get to Count 8, which
5 is licking the breasts.

6 THE COURT: Count 8, okay.

7 MS. FLECK: Then you have Count 14, which is rubbing
8 the breasts. So those are the only lewdnesses count --
9 lewdness counts that could be considered redundant pursuant to
10 Crowley, and that is the only thing that this -- that this
11 instruction talks about. None of those would be considered
12 redundant to something. None of those would be considered
13 precursors or preludes to something such that the defendant
14 would be -- would be at risk of getting found guilty of the
15 sex assault and the lewdness, not one. So what the defense
16 wants via this instruction is to be able to get up and say --

17 THE COURT: All right. Hang on. Let me here from
18 Ms. Feliciano. What -- I mean, I guess -- all right. I'm
19 sort of having second thoughts, honestly. So on Crowley, I
20 mean, you've got situations where I think the factual
21 situation -- I can't remember if it's Crowley or counts in
22 another case where somebody is charged with rubbing his penis
23 on the outside of the vagina and then he inserts it like a
24 second later.

25 MS. FELICIANO: Well, no, that -- there is -- there

1 is --

2 MS. FLECK: It's rubbing the penis on the outside of
3 the hands and then he goes in, I think, to perform fellatio.

4 THE COURT: Okay.

5 MS. FLECK: So --

6 MS. FELICIANO: And that's in -- that's in Townsend.

7 THE COURT: Okay.

8 MS. FLECK: No, that's Crowley.

9 MS. FELICIANO: And --

10 THE COURT: So how does that happen here? I mean,
11 how does that have any applicability here?

12 MS. FELICIANO: You know, I --

13 THE COURT: When -- especially the way that they're
14 -- they've kind of -- the way they've charged these?

15 MS. FELICIANO: The State has its own version of the
16 facts, and you know, the jury is the one who is actually going
17 to find the facts. The jury may find that some of the breast
18 touchings or other actions were incidental, as we've laid out.
19 Our -- we submitted this instruction because the State's
20 instruction was not a complete statement of the law, and I'm
21 trying to find the instruction now. But we submitted this
22 because the State's submitted instruction that said you can
23 find him guilt -- let me find it. And we did go through and
24 this Court recognized when we were previously settling it,
25 that there were instances, even if they were described by Mr.

1 Renteria-Novoa in his statement, that would fit under this
2 instruction, so -- and we did talk about other instances that
3 the alleged victim testified to as well.

4 MS. FLECK: I mean, again, which one? How can -- how
5 can a touching or a licking of the breast be considered a
6 prelude to a sexual assault?

7 MS. FELICIANO: And that's for the jury to decide.

8 MS. FLECK: No, it isn't. It's -- it's the -- it's
9 the exact basis of Crowley. It's not a factual issue. There
10 is no sexual assault that can come from licking of breast.
11 You cannot put the breast through the nipple and create a
12 sexual assault.

13 THE COURT: So --

14 MS. FLECK: It cannot happen.

15 THE COURT: All right. Hang on. Hang on. Hang on.
16 All right. So the sexual -- all right. So you've got the
17 lewdnesses, which generally are -- I guess this -- all right.
18 Count 3, lewdness. Some of the lewdnesses are things like
19 he's sticking his tongue into the anal -- or hang on here.
20 Lewdnesses are all breast touching or breast kissing, right?
21 Am I mistaken about that?

22 MS. FLECK: That -- correct. That's how we pled it.

23 THE COURT: Okay.

24 MS. FLECK: And specifically for that reason. I
25 mean, if you remember, I had 57 counts --

1 THE COURT: Right.

2 MS. FLECK: -- that Ms. Collins --

3 THE COURT: Right. Right, right --

4 MS. FLECK: -- initially had.

5 THE COURT: -- right. All right.

6 MS. FLECK: That we took down to 37.

7 THE COURT: Right. I guess I -- you know, I guess I
8 was under the impression -- now that I'm looking twice, for
9 some reason, I was under the impression at least one of the
10 lewdnesses had to do with him putting his tongue on his anus,
11 but you haven't actually -- I don't know why I thought that,
12 but looking through it, there isn't anything like that. That
13 was why I was concerned about Crowley, where if you're
14 charging in one count with lewdness with putting his tongue on
15 her anus, and then another count had penetrating the anus with
16 his tongue.

17 MS. FLECK: No, and that, I --

18 THE COURT: And I don't know why --

19 MS. FLECK: -- specifically --

20 THE COURT: -- I thought that, but now, I'm
21 thinking --

22 MS. FLECK: -- did that.

23 THE COURT: -- that I was mistaken.

24 MS. FELICIANO: Do you want the clean copy, then, for
25 appeal?

1 THE COURT: Yeah, let's do that. Now that I -- you
2 know, I -- again, I apologize. I don't want to -- you know, I
3 hate backtracking, but somehow I had that impression that you
4 had charged at least one that way, and it doesn't look like it
5 now that I'm checking again with the information. So here is
6 what I'm going to do. Yeah, I'm not giving that Crowley
7 instruction 'cause looking, again, at the way the charges are
8 actually arranged factually, I'm not sure there's a basis for
9 it. Finger to the finger, right.

10 All right. That's what I'm going to do. All right.
11 Got it.

12 THE CLERK: And I have it.

13 THE COURT: All right. Let's do it that way then.
14 All right. What other -- what else did you want to put on the
15 record?

16 MS. FLECK: I don't have any objection to the
17 negative ones. I don't think I had any other objection. I
18 really -- the flight, that's fine. Oh, if I could just -- the
19 -- if we could go through that LaPierre one again as -- just
20 tell me how it's going to --

21 THE COURT: Okay. You want me to read it for you
22 then?

23 MS. FLECK: I know you've already said that it's
24 coming in, but how is it going to read?

25 THE COURT: The first LaPierre one? All right.

1 MS. FLECK: And then are we going to combine it with
2 the State's, or are we just going to make three separate ones?

3 THE COURT: Hang on. Let me find it. All right.
4 This is the way I had it written: To find the defendant
5 guilty of more than one count of sexual assault or lewdness
6 with a child you must first find that the State has proven
7 beyond a reasonable doubt that there is some reliable indicia
8 that the number of acts, and then insert the word "alleged,"
9 actually occurred. Mere conjecture on the part of the alleged
10 victim as to the number of acts is not enough.

11 Next sentence: Reliable indicia may include such
12 evidence as the victim describing the incidents with
13 particularity or any other evidence that indicates that the
14 acts that are alleged actually occurred. And then we're
15 striking the last sentence, which begins, if you find that the
16 State has not proven.

17 And then the second LaPierre instruction I had no
18 changes to so we're giving both of those. And then your
19 question was are we giving both of these in addition to the
20 State's proposed?

21 MS. FLECK: Right.

22 THE COURT: Where -- roughly where is the State's
23 proposed in the packet? This is the problem with not having
24 any numbered instructions yet.

25 MS. FLECK: Or maybe I'm just thinking of the time

1 frame one, so for the time -- so ours is, where a child has --
2 or you changed it to where --

3 THE COURT: A minor, yeah.

4 MS. FLECK: -- to where a minor has been the victim
5 of sexual assault and/or lewdness does not remember the exact
6 date of the act, the State is not required to prove specific
7 date but may prove time frame within which the act takes
8 place. And then there's --

9 THE COURT: And you know what, now that you mention
10 it, in the LaPierre instruction, let's change child to minor
11 so they're consistent. To find the defendant guilty of more
12 than one count of sexual assault and lewdness with a minor.

13 MS. FLECK: Okay.

14 THE COURT: Yeah. No, you know, I think they all
15 work together, all three of them.

16 MS. FLECK: Okay. No problem.

17 THE COURT: All right. What else did you want to put
18 on the record?

19 MS. FLECK: Nothing further from the State. Thank
20 you.

21 THE COURT: All right. On behalf of the defense?

22 MS. FELICIANO: I'll go through 'cause we have these
23 marked. We had submitted what was marked as our propose --
24 Defense Proposed Instruction A, begins, it is not essential to
25 a conviction in the case that the testimony of the alleged

1 victim be corroborated. It was just the alternative to the
2 State's no corroboration evidence. This is also a correct
3 statement of the law. We cited to May versus State. We had
4 asked that this one be given -- the Court is giving the
5 State's no corroboration instruction.

6 Then Instruction B, this is the credibility or
7 believability of a witness. We submitted this as an
8 alternative to the State's credibility instruction. It's also
9 a correct statement of the law and we would ask that this be
10 given with the Court.

11 And then Proposed C, this is our alternative to the
12 State's circumstantial evidence instruction. Again, this is a
13 correct statement of the law and we had asked that this be
14 given as an alternative to the State's circumstantial
15 evidence.

16 Instruction -- sorry -- Defense's D, this begins, if
17 you find that Roxana Perez. This is our theory of the case
18 instruction pursuant to Allen versus State. We're entitled to
19 be instructed -- to have the jury instructed in our theory of
20 the case. That one's not being given.

21 And then E, we just made the record on. Do you want
22 me to make the record on the objections I had on the State's
23 now as well?

24 THE COURT: It's up to you. Make whatever record you
25 want to make.

1 MS. FELICIANO: I didn't know if Ms. Fleck wanted to
2 respond or if we just wanted to keep going.

3 THE COURT: No, go ahead.

4 MS. FELICIANO: Okay. Court's brief indulgence. To
5 the State's no corroboration instruction that begins, there is
6 on requirement that the testimony of a victim, obviously we
7 object to this being given and we had submitted our
8 alternative.

9 To the instruction that begins, where -- we have
10 changed it to, where a minor is an alleged victim of sexual
11 assault and/or lewdness with a child does not remember the
12 exact date, our objection was that this instruction should
13 only be given when there are young children involved. Here,
14 the alleged victim was 13 at the time that the abuse occurred;
15 she was 19 when testifying, so this instruction would not fit
16 within this case. The State should not -- should be required
17 to prove the time frame.

18 The next instruction was that where multiple sexual
19 acts occurs part of a single criminal encounter, this is not a
20 complete statement of the law. That's why we submitted the
21 additional instruction on multiple sexual acts occurring as
22 part of a single criminal encounter that we just made the
23 record on and the Court is not going to give. We would -- we
24 would object, again, as it's not being a complete statement of
25 the law.

1 THE COURT: All right. Ms. Fleck, anything that you
2 want to put on the record in response?

3 MS. FELICIANO: I have a couple more, Judge.

4 THE COURT: Oh, I'm sorry. I thought you were done.

5 MS. FELICIANO: Sorry. I'm trying to think of the
6 fastest way to do this. There was the instruction that
7 begins, the defendant is presumed innocent. We had asked that
8 that be changed from innocent to the words "to be not guilty,"
9 as well as in the following instruction, you are here to
10 determine the guilt or innocence, we had asked that that be
11 changed to whether the defendant is guilty or not guilty. And
12 on Line 3, that the verdict as to the guilt or innocence be
13 changed to whether any other person is guilty or not guilty.

14 We had the same -- the same objection to the
15 instruction that begins, in your deliberation you may not
16 discuss. We had asked that Line 4 be changed to, rather than
17 the guilt or innocence of the defendant be changed to or
18 whether the defendant is guilty or not guilty.

19 To the instruction that begins, the evidence -- the
20 evidence with which you are to consider in this case consists
21 of the testimony of the witnesses, we objected to this, the
22 State's circumstantial evidence instruction, submitted our
23 own.

24 To the next that begins, the credibility or
25 believability of a witness, we again objected to the State's

1 credibility instruction and submitted our own.

2 To the instruction that begins, although you are to
3 consider only the evidence in the case, we objected to Line 4,
4 the sentence that begin -- that says, thus, you are not
5 limited solely to what you see and hear as the witnesses
6 testify. This invites outside research and extrinsic
7 evidence, invites speculation from the jury and to consider
8 arguments as evidence. I think that's it.

9 THE COURT: All right. Ms. Fleck, anything that you
10 want to say in response?

11 MS. FLECK: You want me to respond to the -- theirs?
12 I won't respond to all the one -- problems that they had with
13 the State's. I'll just submit those to you. But with
14 regarding -- regarding the, if you find that Roxana Perez and
15 Guillermo Renteria-Novoa had a consensual relationship, you
16 must find him not guilty of all counts.

17 THE COURT: Yeah, I'm not giving that one.

18 MS. FLECK: Yeah, that's --

19 THE COURT: 'Cause that basically says you can't rape
20 your girlfriend or wife is what it says.

21 MS. FLECK: Well, correct. And consent --

22 THE COURT: Every relationship --

23 MS. FLECK: -- isn't a defense to lewdness and it
24 doesn't account for you knew or should have known theory so --

25 THE COURT: Well, it's not even -- it's not even

1 consent to an act. They're basically saying if they had a
2 consensual relationship --

3 MS. FLECK: Right.

4 THE COURT: -- then he has to be found --

5 MS. FELICIANO: So then --

6 THE COURT: -- guilty of any act.

7 MS. FELICIANO: So then if that -- if the Court were
8 to change that, if you find that Roxana Perez and Guillermo
9 Renteria-Novoa engaged in the acts alleged consensually, you
10 must find him not guilty of all counts, would that satisfy the
11 Court's concerns?

12 THE COURT: Well, why is this not already covered by
13 the other instruction that we just --

14 MS. FELICIANO: Well --

15 THE COURT: -- talked about?

16 MS. FELICIANO: This is our theory of the case.
17 Under Allen, we're entitled to have our theory of the case,
18 the jury instructed on our theory of the case such as we
19 prepared and provided to the Court.

20 MS. FLECK: Okay. Well, in the sexual assault
21 instruction it says that sexual assault has to be against
22 someone's will or under conditions in which he --

23 THE COURT: Right.

24 MS. FLECK: -- knew or should have known, so you
25 already know that if it's -- if they can prove that it's

1 consensual and the jury believes that, then he's not guilty.
2 Right.

3 MS. FELICIANO: We're still also entitled to have
4 them instructed on the theory of our case. We don't have to
5 just have the State's instruction on sexual assault and that's
6 why we submitted it.

7 THE COURT: So what's your changes? If you find that
8 Roxana Perez and Guillermo Renteria-Novoa had what, a?

9 MS. FELICIANO: Well, I know that you had expressed
10 concerns with it saying had a consensual relationship, so if
11 you find that Roxana Perez and Guillermo Renteria -- if you
12 find that Roxana Perez consensually engaged in the acts
13 charged with Mr. -- with Guillermo Renteria-Novoa, then you
14 must find him not guilty of all counts, would that satisfy the
15 Court's concern?

16 MS. FLECK: Okay. So we have now six instructions
17 regarding sexual assault, which would be --

18 THE COURT: Yeah. No, because the problem is that's
19 -- I mean, you basically -- it's like a blunt force. I mean,
20 first of all, as the State notes, I'm not sure you can consent
21 to everything that he's charged with. I mean, this is just --
22 no, it just raises kind of different problems. So anyway,
23 you've made your record, so -- all right. Ms. Fleck, go
24 ahead.

25 MS. FLECK: Okay. With -- regarding the

1 circumstantial evidence, it's duplicative and it's California
2 law.

3 Regarding the credibility, it's duplicative and
4 California law.

5 Regarding the it is not essential to a conviction in
6 this case that the testimony of the alleged victim be
7 corroborated by other evidence, that part is duplicative, and
8 the second sentence, it is sufficient if from all the
9 evidence, you believe beyond a reasonable doubt that the crime
10 of sexual assault was committed by the defendant as alleged,
11 May has been overturned. Regardless, the correct statement of
12 the law under Gaxiola, we have that in ours, and that second
13 sentence, it is sufficient if from all the evidence, you
14 believe beyond a reasonable doubt that the crime of sexual
15 assault was committed, well, that's in other instructions in
16 other ways. But the point of the no corroboration is that if
17 you believe the victim's testimony beyond a reasonable doubt,
18 that is enough. This is saying if it's sufficient from all
19 the evidence, you believe. That has nothing to do with -- I
20 mean, that's not the crux of that Gaxiola instruction.

21 And the other -- the verbiage and the other -- I
22 can't -- without going one by one through which the ones of
23 the State's that the objections were to, I will just submit it
24 to you.

25 THE COURT: All right. Let's go off the record for a

1 second.

2 (Court recessed from 4:21 p.m., until 5:02 p.m.)

3 (Outside the presence of the jury.)

4 THE COURT: All right. Right now they're -- the way
5 the order is, there is the State's proposed with all of the
6 changes and then kind of tucked sideways are the defense
7 proposed with all the changes, so I guess we got to figure out
8 what order they're going in. Does anyone have any particular
9 preferences?

10 MS. FELICIANO: I guess if we want to go through them
11 really --

12 THE COURT: All right. So we got Instruction No. 1
13 on the privileges, now my duty as a judge.

14 Instruction No. 2, if in these instructions, any
15 rule, direction or idea -- are we numbering now or just going
16 through them preliminarily?

17 MS. FELICIANO: I was thinking we could number now
18 and -- as we're going along and then we can slip in where we
19 need to.

20 THE COURT: Right.

21 MS. FELICIANO: Yep.

22 THE COURT: All right. So No. 2 is -- we should get
23 this on the record, I'm sorry.

24 MS. FLECK: I don't think we should number them
25 because we're obviously going to have to insert all of

1 these --

2 MS. FELICIANO: That's --

3 MS. FLECK: -- not knowing where we're going to
4 insert them, and then the numbering will all be wrong.

5 THE COURT: Well --

6 MS. FLECK: So why don't we put them in and then --

7 THE COURT: We can at least number the preliminary
8 ones. The problem is, you know, finding where to stick them
9 in without numbers on them already, you know what I mean, so
10 it kind of makes more sense to go through them sequentially,
11 and when you see that -- you know, when -- before I write the
12 number on there, then that's when we should say, oh, I think
13 we should stick this one there.

14 MS. FELICIANO: That's what I was thinking. We do
15 them simultaneously.

16 THE COURT: Right. 'Cause otherwise it's impossible.
17 Let's stick this in under this instruction and everybody's --

18 MS. FELICIANO: Right.

19 THE COURT: -- flipping through and trying to -- all
20 right. At least the first couple we can number. We got No.
21 1.

22 No. 2 is if in these instructions, any rule,
23 direction or idea.

24 Are we on the record, by the way?

25 THE COURT RECORDER: Uh-huh.

1 THE COURT: All right. No. 3 is an information is
2 but a formal method of accusing a person.

3 MS. FELICIANO: Sorry. I'm sorry. I didn't see the
4 interpreter.

5 THE COURT: Oh, okay. And then that goes on for a
6 couple of pages. I think it goes on for several pages. Hang
7 on one second here.

8 And then that -- when that one is finally done, after
9 Count 36.

10 All right. A person who subjects a minor under 14 to
11 sexual penetration would be the next one unless someone wants
12 to stick one in before that.

13 MS. FELICIANO: I was thinking 4, and then we can
14 stick in our inverse as 5.

15 THE COURT: All right. So this one would be No. 4.
16 A person who subjects a minor under 14 to sexual penetration
17 is 4, and then your No. 5 would be -- where is that one?

18 MS. FELICIANO: The first one in our packet, if the
19 State fails to prove beyond a reasonable doubt that any sexual
20 penetration of a minor under 14.

21 THE COURT: Okay. So that would be No. 5. All
22 right?

23 So then No. 6 goes back to the State's which is a
24 person who subjects a minor to -- under 16 to --

25 MS. FELICIANO: Actually --

1 THE COURT: -- sexual penetration.

2 MS. FELICIANO: Actually, we have another one,
3 another inverse --

4 THE COURT: No, what I did was I --

5 MS. FELICIANO: You combined them.

6 THE COURT: Yeah, I combined them, so that should go
7 after. You see what I did? It's a couple pages down. Oh,
8 there's a small type -- well, I guess it's not that big a
9 deal. There's two periods at the end.

10 MS. FELICIANO: Oh, okay. I see that. I see now the
11 sexual -- the inverse on the sexual penetration. You combined
12 them. Okay.

13 THE COURT: Yeah.

14 MS. FELICIANO: Okay.

15 THE COURT: So -- all right. So number --

16 MS. FELICIANO: 6.

17 THE COURT: Hang on. So No. 5 is -- that's the
18 defendant's [inaudible].

19 No. 6 is a person who subjects a minor of 16 to
20 sexual penetration.

21 And then No. 7 would be the inverse, which is, if the
22 State fails to prove beyond a reasonable doubt that any sexual
23 penetration of a minor under 16.

24 So No. 8 would go back to the State's, which is a
25 person who subjects another person to sexual penetration or

1 who forces another person.

2 No. 9 would be the inverse, which is, if the State
3 fails to prove beyond a reasonable doubt that any sexual
4 penetration.

5 And then let's see. So then No. 10 will be physical
6 force?

7 MS. FELICIANO: What -- do we want to do No. 10 the
8 combined -- our last combined inverse, which begins, if the
9 State fails to prove beyond a reasonable doubt?

10 THE COURT: Yeah, might as well put that there. So
11 No. 10 would be if the State fails to prove beyond a
12 reasonable doubt the defendant engaged in an act of sexual
13 penetration.

14 Then No. 11 would be physical force, right?

15 MS. FELICIANO: Right.

16 THE COURT: All right. So 11 is physical force is
17 not a necessary ingredient.

18 No. 12 would be submission is not the equivalent of
19 consent.

20 No. 13, any person who willfully commits any lewd or
21 lascivious act. Is it 13? Yeah, it's 13.

22 14 is there is no requirement that the testimony of
23 an alleged victim be corroborated.

24 MS. FLECK: I'm sure they want their inverse of
25 lewdness after the lewdness.

1 MS. FELICIANO: I don't -- I don't see it.

2 MS. FLECK: There isn't one.

3 MS. FELICIANO: We submitted one and I don't see it
4 here. We submitted an inverse. It says if the State fails to
5 prove beyond a reasonable doubt the defendant willfully
6 committed any lewd or lascivious act, but it's not in our
7 packet of submitted.

8 THE CLERK: Is it this one? If the State fails to
9 prove beyond a reasonable doubt that any sexual penetration of
10 a minor under 14 was -- no?

11 MS. FELICIANO: No.

12 THE COURT: What does the one that you have say?

13 MS. FELICIANO: What does the one that we have say?

14 THE COURT: Yeah.

15 MS. FELICIANO: If the State fails to prove beyond a
16 reasonable doubt that the defendant willfully committed any
17 lewd or lascivious act upon or with any part of the body of a
18 child under the age of 14 with the intent of arousing and
19 appealing to or gratifying the lust or passions or sexual
20 desires of that person or of that child, you must find the
21 defendant not guilty.

22 THE COURT: Well, I mean, just listening to it, you
23 -- not guilty of what? I think you need to --

24 MS. FELICIANO: Sorry. I guess we would need to add
25 not guilty of lewdness with a child -- with a minor under the

1 age of 14.

2 THE COURT: Do you have that?

3 THE CLERK: I have it right here.

4 THE COURT: Yeah, maybe if you just print that out
5 for me and let's add in those -- the change at the very end.

6 THE CLERK: What do I need to add again?

7 THE COURT: At the very end, not guilty of lewdness
8 with a minor.

9 MS. FLECK: Judge, can we ask a scheduling question
10 because Nick was supposed to be home by some point to take
11 care of his kids and I have to take care of some things at my
12 house, too, so can we just ask what the intention is of how
13 long we're keeping everybody?

14 THE COURT: Didn't I ask everybody on Tuesday if you
15 guys could stay late on Thursday?

16 MS. FLECK: But staying late didn't mean starting a
17 37-count sexual assault closing at nearly 6:00 o'clock at
18 night. Like it's our burden to present this to a jury that
19 hasn't eaten since noon. They have not -- and who knows
20 before that? I mean, when you say, can you stay late, that
21 means starting your closing arguments and then maybe waiting
22 for them to deliberate for a while, but not expecting a jury
23 to digest a 37 --

24 THE COURT: Ms. Fleck, first --

25 MS. FLECK: -- count --

1 THE COURT: -- of all, all right, I get that you
2 don't want to stay late. But first of all, you don't get to
3 tell me what I meant, okay?

4 MS. FLECK: Okay. What I thought you meant. And all
5 I'm asking is so that we can call people and make arrangements
6 if it's going to be -- depending on what time it's going to
7 be.

8 THE COURT: I thought the whole point of my having
9 this conversation on Tuesday was that everybody would call and
10 make arrangements in advance. We had this discussion. That's
11 why we didn't stay late yesterday because they indicated they
12 had child care issues. The whole -- I mean, why do I have
13 these conversations --

14 MS. FLECK: No.

15 THE COURT: -- if everybody sort of blows them off
16 after I've had them?

17 MS. FLECK: Your Honor, I'm not trying to be
18 disrespectful, but it's so frustrating. If the defense didn't
19 want to do a closing argument at 6:00 o'clock at night, they
20 would never be expected to. This is a huge case. We didn't
21 get the jury instructions until this morning. I did the very
22 best I could to pull every single case, to read every single
23 case. We had to rush through the jury instructions to the
24 point that Nick's PowerPoint doesn't even conform with the new
25 -- with the new instructions.

1 So we've done the best that we could to present this
2 case in a -- you know, expedite it, get our witnesses here on
3 time, but to expect us to start a closing argument of this
4 magnitude -- I mean, this is more counts than most trials that
5 go on in the building, and then to start that kind of a case
6 with this detailed of instructions, having added about 15 very
7 detailed instructions that I haven't completely analyzed, that
8 we haven't added to the PowerPoint, and then the jurors when
9 they've been sitting here since noon. And I understand that
10 we were going to stay late, I don't have a problem staying
11 late. It has nothing to do with a time frame. I think we
12 assumed that that would be closer to 7:00 o'clock as opposed
13 to starting closing arguments like this at 6:00 o'clock at
14 night.

15 And I -- I mean, I do feel slightly rushed with the
16 jury instructions having not even had an opportunity to
17 conform our PowerPoint to the instructions. We just got them
18 today, where we gave them to the defense on Friday. So I feel
19 -- I feel like I'm at a bit of a disadvantage. I don't want
20 to be disrespectful to you. I completely understand your
21 decision and the -- you know, your desire to get the case to
22 the jury, but then again, it's really difficult for us when we
23 have been presenting this very sensitive case all week and
24 then to just kind of rush through the most important part. So
25 that's -- my frustration is mostly just in that and not in a

1 timing issue.

2 (Pause in proceedings)

3 THE COURT: All right. Here's the thing. Let me
4 just respond to you, Ms. Fleck. First of all, I'm very aware
5 that you and Mr. Graham have been extremely cooperative. I
6 know that the defense didn't give their proposed jury
7 instructions until this morning, and frankly, you know, when
8 we were here for the Jackson v. Dino hearing last week, I
9 asked both parties to get me -- at least to draft the jury
10 instructions early in the trial so I can at least start
11 looking at them and reading the cases if I need to. You got
12 me the jury instructions on Friday. You guys didn't do
13 anything. I asked on Monday, I asked on Tuesday, I asked on
14 Wednesday.

15 Here we are on Thursday and I got them for the first
16 time, which is why I walked in this afternoon, you know, and
17 we spent time settling the jury instructions, but I hadn't
18 managed to read all the cases. That's why I asked for at
19 least a draft on the first day of trial. You guys know this
20 case a lot better than I do. I get that some of the issues
21 are not going to be fully flushed out until everybody has
22 testified, but you certainly know enough to give me at least a
23 couple of the cases so I can read them before we walk in here
24 and I'm not sitting here on the bench reading the case while
25 the witnesses testify, all right?

1 The reason I say that is not necessarily to embarrass
2 you, but to acknowledge, Ms. Fleck, that I know that you and
3 Mr. Graham have been timely. You have been responsive, and so
4 I don't want this to come across as any kind of punishment on
5 you guys, all right? I totally get that. I completely agree
6 with you.

7 My frustration is we had this conversation on
8 Tuesday, you know, talking about staying late, and as you guys
9 have noticed, I've been telling the jury all week long, look,
10 I know we're coming on a three-day holiday. We're going to do
11 our best to get out of here on Thursday. I've been telling
12 them that all week long, and I try to be respectful of their
13 feelings. We are all being paid to be here. Yes, staying
14 late sucks. You guys don't get paid overtime, I don't get
15 paid overtime. They're not being paid at all. We've yanked
16 them out of their lives and I try to be respectful of what the
17 juries' concerns are because being here late is an imposition
18 on everybody.

19 You know, I have a two-year-old daughter, I'm not
20 seeing her right now, either, but it's a far greater
21 imposition on the 14 of them than it is on anybody here. And
22 you know, some judges are very happy making the jury come back
23 and make them do things because, hey, they're just the jury,
24 we don't deal with them every day and I'm the judge and I
25 don't give a damn, but I'm not like that. I try to be

1 respectful to everybody, all the attorneys.

2 You know, that's why on Tuesday I had conversations
3 like, hey, do you guys mind staying late on Thursday? They
4 indicated they had a problem on Wednesday so we didn't stay
5 late on Wednesday. There are probably some judges who would
6 have made you stay, go get a -- go get a babysitter, I don't
7 give a damn. And you know, I don't have to name names, you
8 can probably think of a couple judges right off the top of the
9 head that I'm talking about. I try to be respectful of
10 everybody, which is why I have -- I try to have conversations
11 early in the case about jury instructions, about staying late
12 on particular days so we can work around it.

13 I know that we're off to a little bit of a later
14 start, in fact, a substantially later, you know, start on this
15 than we had planned for all kinds of reasons, but you know,
16 that's -- that's where I'm coming from is I'm thinking about
17 their feelings. And I think sometimes in the court system,
18 the juries' feelings get given short shrift because we're also
19 focussed on what we do and we got all the power, and you know,
20 we're here every day and all that kind of stuff and I try to
21 be sensitive about that.

22 So you know, I get that you want to know what the
23 schedule is and I know that obviously it's an important case,
24 and you know, their -- you know, your concern is obviously,
25 you know, there's all these counts and you want the jury to be

1 paying attention, you know, I understand all of that. My
2 concern -- you know, even at calendar call, was, you know, we
3 got [inaudible] three-day weekend, and as I mentioned, I've
4 done a bunch of trials in which we had three-day weekends and
5 what happens is -- I mean, obviously, I'm not saying that my
6 experience is a large statistical sample, but anecdotally, you
7 tend to get like 5-, 10-minute verdicts on days before
8 three-day weekends, and that's really not -- I mean, they're
9 not even deliberating. They're just rushing in there, we got
10 to go home, let's go, guilty or not guilty and just kind of
11 rush out.

12 MS. FLECK: But that's what my fear is for tonight.
13 I mean, that's what we're doing tonight. We're putting this
14 -- we're asking these people to listen to this. It's not my
15 personal schedule. Look, I -- at calendar call, I said this
16 is going to take five days, and now, we're getting cut short
17 the five days. If they didn't have to come back at all
18 tomorrow, if tomorrow was Saturday or something, fine. But we
19 have all of Friday. I don't understand why we can't instruct
20 and then argue in the morning where people are fresh when
21 they're going to have to deliberate anyway. Now, we're asking
22 them to deliberate into eight, nine, ten -- how is this jury
23 going to come back with 37 sexual assault counts tonight?

24 THE COURT: No, I agree they probably aren't, but my
25 -- it's not my intention to make them stay and deliberate all

1 night. My intention was we can at least give them the
2 instructions, close and then they can come back tomorrow and
3 just start deliberating right at 9:00 o'clock. And then if
4 they need to on 37 counts, they have a full eight hours to
5 deliberate, because frankly, it might take them eight hours.
6 And my concern was with giving the instructions, closing
7 tomorrow, they don't even get the case until 11:00, 11:30, and
8 once you get toward noon on the Friday before a three-day
9 weekend, now they're looking at their watches the minute they
10 get back into the jury room. That's my fear, and you know,
11 now, they feel a time pressure. At 9:00 in the morning you
12 probably don't feel a time pressure. At 1:00, you're like,
13 you know, what are we going to do? That's my concern. That's
14 always been my concern.

15 I really -- you know, I'm not saying I'm going to
16 make them stay and deliberate all night. My intention was to
17 give them the case tonight, we'll adjourn, they can come here
18 fresh at 9:00 o'clock. At 9:00 o'clock, they feel, oh, we got
19 all day, plenty of time, and they can focus on it. That's --

20 MS. FLECK: I mean, my concern --

21 THE COURT: That's my fear.

22 MS. FLECK: -- is on both sides, to the defense and
23 us. It's like, you know, what happens then if they do come up
24 with some quick verdict and then it's like, oh, well, it was
25 so late? I mean, my concern is just that we have put so much

1 into this case already and then they're not even listening. I
2 don't see how if they're sitting here since noon today, that
3 they're even paying attention to our closing. And if it was a
4 -- if it was a PSV or if it was a, you know, battery with
5 intent, I would say whatever, but a 37-count sexual assault
6 case.

7 THE COURT: Well, I mean, I understand that. My
8 concern is we bring them back tomorrow, they're not listening
9 anyway because, you know, they're getting ready to do whatever
10 with their families and they're going to be, oh, my God --

11 MS. FLECK: Okay.

12 THE COURT: -- it's Friday. That's --

13 MS. FLECK: Let's just go for it then.

14 THE COURT: That's my concern.

15 MS. FLECK: Let's just do it.

16 THE COURT: All right. So No. 14 would be the
17 inverse, if the State fails to prove beyond a reasonable doubt
18 that the defendant willfully committed any lewd or lascivious
19 act upon or with any part.

20 All right. Next one is there is no requirement that
21 the testimony of an alleged victim of a sexual offense, that's
22 15, everyone agree?

23 MS. FELICIANO: Yep.

24 THE COURT: Where a minor has been the victim of a
25 sexual assault and/or lewdness with a minor and does not

1 remember the exact date of the act, so that would be 16.

2 Where multiple sexual acts occurred as part of a
3 single and criminal encounter would be 17.

4 MS. FELICIANO: I'm sorry. Can we before that one
5 because we have the one that says the approximate date, but
6 the person must testify with the particularity, should we put
7 that --

8 THE COURT: The reliable indicia one or the --

9 MR. FELICIANO: The other one, with the particular --
10 the particularity one, for the crimes of sexual assault and
11 lewdness with a child, there is no absolute requirement that
12 the State --

13 THE COURT: Well, that one should go with the
14 reliable indicia one, I think.

15 MS. FELICIANO: That's what -- that's what I was
16 thinking and I thought the reliable indicia should go after
17 the --

18 THE COURT: All right. So let's do -- let's do No.
19 17 would be for the crimes of sexual assault and lewdness with
20 a child, there is no absolute requirement.

21 18 would be to find the defendant guilty of more than
22 one count of sexual assault.

23 And 19 would be when multiple sexual acts occur.

24 MS. FELICIANO: Right. Yeah.

25 MS. FLECK: Wait. What's 17?

1 THE COURT: 17 is for the crimes of sexual assault
2 and lewdness with a child there is no absolute requirement
3 that the State allege the exact date of the offense charged.

4 MS. FELICIANO: Okay. And then --

5 MS. FLECK: And then 18 is what?

6 THE COURT: 18 is the reliable indicia. To find the
7 defendant guilty of more than one count of sexual assault or
8 lewdness with a minor.

9 And then 19 is where multiple sexual acts occur as
10 part of a single criminal encounter a defendant may be found
11 guilty for each separate or different act.

12 MS. FELICIANO: And then for 20, since we're on
13 sexual assault, do we want to do the -- it's -- the reasonable
14 good faith belief instruction?

15 THE COURT: It is a defense of the charge of sexual
16 assault?

17 MS. FELICIANO: Yes. Yeah. Since we're just --

18 THE COURT: All right. Let's make that No. 20.

19 MS. FELICIANO: Okay.

20 THE COURT: So then 21 is open and gross lewdness.

21 MS. FELICIANO: Uh-huh.

22 THE COURT: And 22 is to constitute the crime charged
23 there must exist a union or joint operation.

24 23 is the defendant is presumed innocent until the
25 contrary is proved.

1 24, you are here to determine the guilt or innocence.

2 The only one we have to stick in is the flight
3 instruction. Any preference on where that goes, or just at
4 the end?

5 MS. FELICIANO: No preference. At the end is fine.

6 THE COURT: All right. So 25 is the evidence which
7 you are to consider -- you know what, since --

8 MS. FLECK: No, I don't want it at the very end.

9 THE COURT: No, no, no. It should be -- it should be
10 before that one.

11 MS. FLECK: No.

12 THE COURT: It should be before that because now
13 you're getting into technical stuff.

14 You know what, let's make the flight instruction 24.
15 And then we'll make 25, you are here to determine the guilt or
16 innocence of the defendant.

17 MS. FLECK: Or why not have it be -- or it could even
18 be 23 'cause that's -- those all -- 23 on -- let's make the
19 lack of flight 23.

20 24 would be the defendant is presumed innocent until
21 the contrary is proved 'cause now we're getting into kind of
22 the technical instructions.

23 25 would be you are here to determine the guilt or
24 innocence.

25 26 would be the evidence which you are to consider.

1 27 is the credibility or believability of a witness.

2 28 is although you are to consider only the evidence.

3 29 is in your deliberation, you may not discuss.

4 30 is when you retire to consider your verdict, it's
5 the foreperson instruction.

6 31, if during your deliberation, it's the playback
7 instruction.

8 And 32 is now you will listen to the arguments of
9 counsel. And then we got the verdict form. And were there
10 any objections or any changes to the verdict form?

11 MR. FELICIANO: No, Judge.

12 (Court recessed from 5:25 p.m., until 5:45 p.m)

13 (Outside the presence of the jury.)

14 THE MARSHAL: Remain seated. Court is back in
15 session.

16 THE COURT: All right. Ready?

17 THE CLERK: There's the jury instructions.

18 THE COURT: All right. Back on the record, State
19 versus Guillermo Renteria-Novoa, C268285. We have the jury
20 instructions finalized, and Joe went to go get the members of
21 the jury, so --

22 MS. FLECK: Can I just ask one more scheduling
23 question? Is -- they have ordered food for the jury, right?

24 THE COURT: Yeah.

25 MS. FLECK: Is there any way that we can ask them if

1 they would rather eat before, if they're going to deliberate?

2 My concern is this, they are -- have been sitting here --

3 THE COURT: Right. Your concern is --

4 MS. FLECK: -- since noon.

5 THE COURT: -- they're getting hungry now.

6 MS. FLECK: My concern is they are just done and
7 aren't even going to pay attention and this is going to be two
8 hour -- two and a half hours between the three of us.

9 THE COURT: Yeah, okay.

10 MS. FLECK: Or at least maybe the -- or take a break
11 in the middle of closings?

12 THE COURT: Hang on. Close the door for one second,
13 for one second.

14 You want me to bring them in here and ask them that
15 or just give them the food now? I'm not sure what you're
16 asking.

17 MS. FLECK: If -- just give them the option, like,
18 look, okay. We're going to be closing tonight. It's
19 probably --

20 THE COURT: Right.

21 MS. FLECK: -- going to be a couple hours at least
22 process. Would you like to eat now, would you like to eat
23 after, or would you like to eat maybe after the State and
24 before the defense or something like that?

25 THE COURT: All right. Let's bring them in and ask

1 them that.

2 Well, hang on. Let me give the defense a chance to
3 respond. Do you have any thoughts?

4 MS. FELICIANO: I don't think they should eat in the
5 middle of all the closings. I mean, either now or wait.

6 THE COURT: No, obviously --

7 MS. FELICIANO: Yeah.

8 THE COURT: You know, I don't want them munching on
9 pizza while you guys are closing or anything like that.

10 MS. FLECK: No, I didn't mean that.

11 THE COURT: But the question is now or afterwards --

12 MS. FLECK: I just meant like take a break --

13 THE COURT: -- are the two options, right?

14 MS. FLECK: -- in the middle.

15 MS. FELICIANO: Yeah, we don't have --

16 MR. FELICIANO: Yeah.

17 MS. FELICIANO: -- a preference, just yeah, not take
18 a --

19 THE COURT: We might -- I mean, even though there is
20 a lot of jury instructions here, I mean, first of all, we're
21 -- you know, I'm not going to read with -- hang on. Let's get
22 this on the record. Instruction No. 3 is basically a
23 recitation of the entire information. Do you -- do both of
24 you waive my reading that word for word?

25 MS. FELICIANO: Yes.

1 THE COURT: Okay. Then if I can skip over that, I
2 can zip through this in probably 15 minutes, especially since
3 they have copies. I read really, really fast.

4 MS. FLECK: Okay.

5 THE COURT: So the question is, I don't know how long
6 yours is going to go. It sounds like you guys are planning on
7 pretty lengthy. So you want to bring them in here and ask
8 them if they want to eat now?

9 MS. FLECK: My only concern through all of this is
10 that my jury is --

11 THE COURT: No, I understand --

12 MS. FLECK: -- paying attention.

13 THE COURT: -- that they're going to be -- at the
14 very end, especially during rebuttal, they're going to be
15 fading, right?

16 MS. FLECK: Right. And I don't --

17 THE COURT: All right. Let's --

18 MS. FLECK: There's a pregnant girl on the jury.

19 THE COURT: Right. Let's bring them in here and ask
20 them then.

21 THE MARSHAL: All rise for the presence of the jury.

22 (Jury reconvened at 5:47 p.m.)

23 THE MARSHAL: Please be seated.

24 THE COURT: Will counsel stipulate to the presence of
25 the jury?

1 MS. FLECK: The State does, Your Honor.

2 MR. FELICIANO: Yes, Judge.

3 THE COURT: All right, ladies and gentlemen. Here's
4 the situation. I am fully aware that it's much later in the
5 day than we had anticipated. As you can see on your page is a
6 set of jury instructions. It took us a little bit longer --
7 substantially longer to put that together and get -- you know,
8 get it all clean for you guys than we had anticipated. Here
9 is the question. We had ordered food. It just arrived a
10 second ago; otherwise, I would have had you guys eating this
11 whole time.

12 Here's the question. We're coming up on 6:00
13 o'clock. It's my intention to at least read the instructions,
14 which should only take about 15 minutes, especially since you
15 have copies. I'm going to zip through them very quickly.
16 Then we're going to do closing arguments, so we may be looking
17 at -- I don't know how long they're going to go. Sometimes
18 the lawyers themselves don't know, but it may be a couple
19 hours or so.

20 So the question is, do you guys want to take a very
21 short break and eat now so you have some energy, or do you
22 want to wait until -- to hear everything and then eat
23 afterwards? It's your call.

24 And after closing, depending on what time it is, what
25 I -- we'll see what time it is and what is most likely to

1 happen is you guys will hear the arguments and we'll probably
2 just -- if you want to stay for the night and deliberate,
3 that's totally up to you just so you have tomorrow free, or
4 you can come back tomorrow in the morning and start
5 deliberating.

6 It's totally up to you. What we'll have to do is see
7 where we are and what time we finish. But the question for
8 right now is, do you want to take a quick, maybe just 10-,
9 15-minute break and eat and -- before you get started, or do
10 you want to wait and then listen to everybody, which may last,
11 as I indicated, potentially a couple hours, I don't know, and
12 eat afterwards, while you're deliberating? It's your call.

13 Let's see a show of hands. Who wants to take a --

14 JUROR NO. 7: We'll eat.

15 THE COURT: All right. Let's take a -- let's try to
16 make it quick then. Let's bring the food in here. All right.
17 It sounds like it's pretty --

18 THE CLERK: No, we're going to take it back to the
19 jury room.

20 THE COURT: No, no. I don't mean in here. I mean in
21 there. But here's what we're going to do. Let's take a short
22 -- let's take a short break, and you know, the faster you eat,
23 the faster you can get started, so I don't want you to get
24 sick or anything like that, but just [inaudible].

25 So the same -- do you guys remember the same

1 admonishments about not talking and investigating? All right.
2 Thanks. We'll bring the food in there and see you guys in --
3 let Joe know -- I'm ready to get on here in a minute, so let
4 him know as soon as you're done eating and we'll just bring
5 you right back in here, all right?

6 (Jury recessed at 5:50 p.m.)

7 THE COURT: All right. Anything that anyone has --
8 what do you guys want to --

9 Let's go off the record, Sara.

10 (Court recessed from 5:50 p.m., until 6:13 p.m.)

11 THE COURT: All right. Are we on the record, Sara?

12 THE COURT RECORDER: We are.

13 THE MARSHAL: Ready?

14 THE COURT: All right. We're ready.

15 THE MARSHAL: All rise for the presence of the jury.

16 (Jury reconvened at 6:16 p.m.)

17 THE MARSHAL: Please be seated.

18 THE COURT: Will counsel stipulate to the presence of
19 the jury?

20 MR. FELICIANO: Yes, Judge.

21 MS. FLECK: State stipulates.

22 THE COURT: All right, ladies and gentlemen. You
23 have now heard the evidence in this case. It is -- I am now
24 going to read the instructions to you that apply to this case.
25 Each of you has a copy of the instructions in your hands. You

1 will be allowed to take this set back with you into the jury
2 room so please feel free to mark it, make notes, underline
3 anything that you want to as I go along. And secondly, as I
4 indicated, because you have a copy, I'm going to read it
5 relatively quickly. If I go too fast, please raise your hand
6 and let me know, all right?

7 (Jury instructions read, not transcribed.)

8 THE COURT: That concludes the instructions. Is the
9 State ready to present the closing statement?

10 MR. GRAHAM: Yes, Your Honor. Thank you.

11 THE COURT: You may proceed.

12 MR. GRAHAM: Could I get it clicked over for the
13 PowerPoint.

14 (Pause in proceedings)

15 STATE'S CLOSING ARGUMENT

16 MR. GRAHAM: Now you know why you had to wait so
17 long. We had to right a book for you-all in these
18 instructions. And what I'm going to do is kind of apply
19 everything that we heard, all the testimony to this, and I'm
20 going to mesh them to -- mesh them for you together to see how
21 they apply. And how I'm going to do that is I'm going to
22 refresh in your recollections the counts because it's our
23 burden. It's our burden by the State to prove to you that
24 everything that we said happened in this, what's called a
25 second amended criminal complaint, happened beyond a

1 reasonable doubt.

2 And reasonable doubt, you know, and we've been here
3 for a while, so I'm going to -- I'm just going to cut to the
4 chase. Let me just kind of go through this real quick. There
5 we go, reasonable doubt. Reasonable doubt is one based on
6 reason. It is not mere possible doubt. Doubt to be
7 reasonable must be actual, not mere possibility or
8 speculation. In fact, if the minds of the jurors, after the
9 entire comparison and consideration of all the evidence, are
10 in such a condition that they can say they feel an abiding
11 conviction of the truth of the charge, there is not a
12 reasonable doubt.

13 And it's funny 'cause reasonable doubt is the highest
14 burden in the land. It's the highest criminal burden that
15 there is. So you blow through a stop sign, a motorcycle cop
16 catches you. He says, hey, you just blew that stop sign, I'm
17 writing you a ticket. And you get that ticket and you say I
18 didn't do this, and you go to court and you're in court in
19 front of the judge and you tell the judge, I want my day in
20 court. I don't think I blew that stop sign. He says, all
21 right, you're entitled to a trial. What's the standard?
22 Reasonable doubt, that's the standard that is there.

23 Somebody gets a DUI, any criminal act in this
24 country, the standard is the same. So a murder standard,
25 reasonable doubt, traffic ticket, reasonable doubt, it's the

1 same. It's the same standard that juries like you find that
2 the State has met every day in courtrooms up and down this
3 courthouse. So I just wanted to get that out there first.

4 So one of the interesting things is that there is no
5 requirement that the testimony of a victim of a sexual assault
6 and/or lewdness with a minor be corroborated. A victim's
7 testimony standing alone, if we hadn't given you any other
8 corroborating evidence other than the victim got up here and
9 testified and then we shut it down and we said that's our
10 case, that alone, if you believe it beyond a reasonable doubt,
11 would be enough for you to find that we proved our case beyond
12 a reasonable doubt.

13 One of the first instructions that I went through
14 real quick is that the State has to prove two things, that a
15 crime has been committed and that the defendant is the one
16 that committed those things. Well, this isn't that type of
17 case, and the reason it's not a mistaken identity case is the
18 victim clearly identified him. The family members all
19 identified the defendant. It's basically not a who done it
20 case. It's -- we're not -- nobody's disputing identity in
21 this case. His phone records corroborate that he is the one
22 who's calling the victim. His text messages corroborate it.
23 In fact, his own statements corroborate that he is involved
24 with this victim.

25 So let's go over some of the instructions regarding

1 sexual assault because you need to know them to know whether
2 or not we met our burden. So sex assault, sexual assault, a
3 person who subjects a person to sexual penetration against the
4 person's will, or under conditions in which the perpetrator
5 knows or should know that the person is mentally or physically
6 incapable of resisting or understanding the nature of his or
7 her conduct is guilty of sexual assault.

8 Now, why is this important? It's important for two
9 reasons. The first reason is against the person's will.

10 Roxana got in here and what did she testify? She testified
11 that she never wanted this to happen. She didn't want it to
12 happen. She testified over and over to each sexual assault
13 that it was against her will. She never wanted that man to do
14 what he did to her, never wanted it. However, there is a --
15 the State has two options, against the person's will or under
16 conditions in which the perpetrator knows or should know that
17 the person is, what, mentally or physically incapable of
18 resisting or understanding the nature of his or her conduct.

19 So how does that come into play? Well, we'll get to
20 that, but a preview is, well, how old is she when it starts?
21 It's 12. How is she able to consent? How is she -- or the
22 defendant knows because he's lived with her that she's unable
23 to know what's going on. He is a father figure to her.
24 That's his testimony, his admission, I thought of her as a
25 daughter, as well as her own admissions.

1 We go into the 14 years, and I'm going to go through
2 this because -- or I'm going to go past this because the only
3 difference is the 14 years and 16 years, so 14 years and 16
4 years. So that's important to note when you're going through
5 your verdict form to see what -- how the dates line up to get
6 the ages in.

7 So under sexual assault, there is the term "sexual
8 penetration." Sexual penetration includes cunnilingus, or any
9 intrusion, however slight, of any part of a person's body into
10 the genital or anal opening of the body of another, including
11 sexual intercourse in its ordinary meaning. What is absent
12 from that definition? Ejaculation is not necessary. So there
13 has never been any allegation that the defendant put his penis
14 inside her at any point. If that were the case, ejaculation
15 would not be necessary in this case, and I'll get kind of to
16 that in a little bit.

17 So now, defining "cunnilingus." The touching,
18 however slight, of the female sexual organ by the mouth or
19 tongue of another person. And then digital penetration is
20 kind of self-explanatory, but the placing of one or more
21 fingers of the perpetrator into the anal or genital opening of
22 another person. One thing about sexual assault, assault has
23 the connotation.

24 It has -- when you say "assault," you think something
25 physical. You hear it all the time, assault and battery.

1 They kind of go together. But in sexual assault, physical
2 force is not necessary. It's not an element of the crime.
3 The crucial question, like it states there, is not whether a
4 person was physically forced to engage in sexual assault, but
5 whether the act was committed without her consent, which is
6 the first prong which I stated -- that we went over first,
7 without her consent, or under conditions in which the
8 defendant knew or should have known the person was incapable
9 of giving her consent; or understanding the nature of the
10 acts.

11 How is she -- so we go back here. How is she
12 supposed to react? She moved here from Mexico. She was
13 introduced to the -- to the defendant as her mother's
14 boyfriend. He becomes the type of figure father to her. She
15 is the youngest of the children and her mom is at work a lot
16 of the time, especially when she gets home from school.
17 That's commonly called latchkey kid. You get home, nobody's
18 home. But you got to look at what she has to do to resist.
19 And the law states that she is not required to do more than
20 her age, strength, surrounding facts and attending
21 circumstances make it reasonable for her to resist the sexual
22 assault.

23 So -- and I love this instruct -- this instruction is
24 great. It instructs us that submission is not the equivalent
25 of consent. Just because somebody gives in, just because